

**SCOTTISH BORDERS COUNCIL**

**PLANNING AND BUILDING STANDARDS COMMITTEE**

**3 SEPTEMBER 2018**

**APPLICATION FOR PLANNING PERMISSION**

<b>ITEM:</b>	<b>REFERENCE NUMBER:</b> 17/01255/FUL
<b>OFFICER:</b>	Craig Miller
<b>WARD:</b>	Selkirkshire
<b>PROPOSAL:</b>	Construction of wind farm comprising 7 No turbines up to 132m high to tip, access tracks, control building and associated infrastructure
<b>SITE:</b>	Land west of Whitslade (Barrel Law), Selkirk
<b>APPLICANT:</b>	Barrel Law Windfarm Ltd
<b>AGENT:</b>	ABO Wind UK Ltd

**SITE DESCRIPTION**

The site is contained within farmland at Todrig and Whitslade Farms, 7km south-west of Ashkirk and 3.5km north-west of Robertson. The site is approximately 305 hectares in size located between Barrel Law (384m AOD) and Ale Moor Craig (378m). Turbine bases vary from 315 – 360m. The land is generally rough sheep grazing with Hyndhope and Ale Moor Forests to the west. Several small watercourses pass through the site including the Todrig, Hog and Bleakhill Burns as well as the Ale Water. Langhope Rig Wind Farm is located approximately 1.8km north of the nearest turbine.

There are no residential properties within the site and the nearest settlement within 5km is Robertson to the south. Hawick is 8km south-east. There are scattered farms and residential properties closer to the site, principally to the south and east, three in particular within 2km – Easter Ale Moor, Whitslade and Hawksnest. A total of 97 properties lie within the 5km radius of the development.

The nearest public roads to the site are the B711 2.3km away to the south and the unclassified Ashkirk to Robertson road a similar distance to the east. The B7009 is 5.4km to the north-west and the closest major road is the A7 6.7km to the east. Ale Moor Reservoir lies 2.7km south-west of the nearest turbine.

There are no claimed Rights of Way or Core Paths within the site apart from 1.2km of the route from Ale Moor Reservoir to Ettrickbridge.. Long distance footpath routes lie within the 10km study area, the nearest being the Roman and Reivers Route 3.7km to the south-east. A series of Core Paths and Rights of Way also surround the site, the nearest being 0.6km south-east of the nearest turbine.

There are no statutory designated landscapes within 5km of the site. Of the two National Scenic Areas within the study area, the nearest 17.5km to the east is the Eildon Hills NSA. Of the Special Landscape Areas and Regional Scenic Areas in the vicinity, the Teviot Valley and Tweed, Ettrick and Yarrow Confluence SLAs are 11.5km away, The Tweedsmuir Uplands SLA is 12km away and the nearest RSA in Dumfries and Galloway is the Langholm Hills RSA at 17km. There are 21 Gardens and Designed Landscapes within the study area, the nearest being Bowhill at 8.5km . The site is some distance from the Ale Water and River Teviot, which are tributaries

of the River Tweed Special Area of Conservation (SAC), although also close to the smaller tributaries feeding the system such as the Todrig Burn. There are no SSSIs within or immediately adjacent to the site, the nearest being Ale Moor West Loch at 2.4km and Akermoor Loch at 3.4km.

## **PROPOSED DEVELOPMENT**

The proposal is for a commercial wind farm comprising of seven turbines 132m to blade tip. The development also includes:

- Crane hardstandings (50m by 20m);
- Access track 580m long from the existing forest track then individual tracks to the turbines, typically 4.5m wide and surfaced in coarse aggregate. One area of track will be of floating construction across peat;
- Underground high voltage and control cables with an overhead 33kv grid connection link
- One or more borrow pits to source materials for ground infrastructure;
- Temporary construction compounds and hardstandings
- Substation/switchgear housing building (24m by 7m and 6m in height) with adjoining compound;
- Use of the existing access for Langhope Rig from the B711 for the delivery of the turbine components and then used for maintenance and decommissioning;

The construction phase would last for 8 months and the development would have a 25 year operational phase with site restoration and decommissioning at the end of the period. The wind farm is claimed to provide 24.5MW of installed capacity serving up to 16,300 homes and producing 40kt CO2 savings per annum. The application includes a 50m micro-siting allowance for turbines and infrastructure following detailed ground investigations and geotechnical surveys but up to 100m if allowed by SBC.

Access to the site would be via the A7 to the B711 at its junction south of Hawick, then into the site via the existing access off the B711 serving Langhope Rig. There are no intentions to reinstate the previous anemometry mast, wind speed and direction information being intended to be gathered via built-in anemometry on the turbine nacelles themselves.

It is claimed there will be around 30 staff employed during the main construction phase with an associated £8 million local spend. There would also be a community benefit fund, either in the form of annual payments or also including shared ownership.

## **PLANNING HISTORY**

10/01506/FUL – Planning permission was granted for a temporary 70m anemometer in December 2010 for a three year period. This was erected, information gathered and the mast then removed.

12/00191/FUL – Planning permission was refused by the Council in March 2013 for a wind farm consisting of eight turbines at a tip height of 125m on a site partially within and to the south-east of the current site. The reason for refusal was as follows:

1. *The development conflicts with Policy I20 of the Scottish Borders Structure Plan 2001-2018 and Policy D4 of the Consolidated Scottish Borders 2011 Local Plan, in that by virtue of its adverse impact on the Ministry of Defence operations at:*
  - (i) *Eskdalemuir Seismological Recording Station; and*
  - (ii) *Deadwater Fell ATC Radar at RAF Spadeadam**it would be incompatible with Ministry of Defence objectives relating to protection of public safety at a UK level and the obligations set out in international treaties.*
  
2. *The development conflicts with Policies N9, N20, I19 and I20 of the Scottish Borders Structure Plan 2001-2018, Principle S1 and Policies G1 and D4 of the Scottish Borders Consolidated 2011 Local Plan, in that the development, by virtue of:*
  - (i) *its vertical scale in relation to the scale of the receiving landscape;*
  - (ii) *its prominent and dominant appearance in local, adjacent and wider landscapes;*
  - (iii) *its poorly designed appearance from a range of vantage points due to overlapping and variation in heights viewed in relation to underlying topography;*
  - (iv) *the intensification of adverse landscape and visual impacts due to cumulative visibility with the approved Langhope Rig wind farm, particularly from the area around the William Ogilvie Cairn on the road to Robertson (but also from a range of other areas/point of visibility)*
  - (v) *the vertical scale of the turbines, combined with their elevated position in the landscape on what appears as a ridgetop from certain vantage points;*
  - (vi) *the proximity of the development/turbines to residences and their environs, in particular Easter Ale Moor and to a lesser extent Hawksnest (Whitslaid) and Wester Ale Moor; and the inability to mitigate against the dominating presence of the development in relation to said residences would unacceptably erode landscape character and quality, thereby harming the landscape and visual environment of the Borders and would cause unreasonable prejudice to the private amenity currently experienced by residents.*

The refusal was taken to appeal and was dismissed by a Reporter in August 2014, the Decision Letter summarising as follows:

*43. I have found that the proposal would not be consistent with Policy D4 of the local plan in terms of its unacceptable adverse impacts on the landscape and on aviation. The policy allows for approval if the decision-maker is satisfied that the contribution to wider economic and environmental benefits outweighs the potential damage to the environment or to tourism and recreation. I have considered the benefits in paragraphs 37 and 38 above. These are the contribution to renewable electricity targets and to reduced carbon emissions. However, in my view these benefits are not sufficient to outweigh the negative impacts of the proposal, and so it fails to conform to Policy D4.*

*44. I therefore conclude, for the reasons set out above, that the proposed development does not accord overall with the relevant provisions of the development plan, and that there are no material considerations which would still justify granting*

*planning permission. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.*

## **NEIGHBOURING SITES/SCHEMES RELEVANT TO CONSIDERATION OF THE CURRENT PROPOSAL:**

### Operational:

**Langhope Rig** is situated 1.8km to the north of the site and consists of 10 turbines 121.2m in height.

### Consented

**Windy Edge** is approximately 18km to the south-east of the site and would consist of 9 turbines, 3 at 110m in height and 6 at 125m.

**Pines Burn** is 16km to the south-east of the site and comprises of 12 turbines, 7 at 149.9m and 5 at 130m. The Council refused planning permission in November 2017 but the scheme was recently consented by the Department of Planning and Environmental Appeals.

### In the Planning System

**Birneyknowe** is 13km to the south-east of the site and comprises of 15 turbines 132m high. The Council objected to this Section 36 application in March 2017. A Public Local Inquiry has been held and the decision of the Scottish Ministers is awaited.

### Other Schemes

**Wauchope and Newcastleton Forest:** A scoping opinion was issued by the Energy Consents Unit in March 2016 based on 90 turbines with a tip height of 132m at three separate sites (Wauchope East, Wauchope West and Newcastleton Forest).

**Cliffhope:** A scoping opinion was issued by the Energy Consents Unit in January 2018 based on 46 turbines with a maximum tip height of 200m on land approximately 21km of the site

**Fawside:** A scoping opinion was issued by the Energy Consents Unit in April 2018 based on 49 turbines with a maximum tip height of 200m on land approximately 12km south of the site.

## **REPRESENTATION SUMMARY**

75 respondents have submitted representations in respect of the application, all but one objecting. These can be viewed in full on the Public Access portal on the Council's website. The principal issues raised include the following:

### Objections:

- Detrimental impacts on landscape, visual amenity and rural tranquillity
- Detrimental landscape and visual impacts from viewpoints including iconic ones such as Carter Bar and Ruberslaw.

- Turbines are of industrial scale, higher than the previous scheme and out of scale with the landscape.
- Photomontages are lacking from Carter Bar.
- Visual material underestimates the visual and landscape impacts.
- There have been no reductions in ZTV coverage
- Inconsistent designs when compared with Langhope Rig
- Too many wind farms proposed in the area and significant cumulative issues, especially with Langhope Rig, defining and dominating the landscape.
- Reporter took Langhope Rig fully into account and the fact it has now been developed does not change the position.
- Previous Reporter decision stated Langhope Rig should not be extended.
- Langhope Rig should not be used as a precedent for more development.
- Scheme needs to be determined against the correct Ironside Farrar Landscape Capacity Study, the application being contrary to the 2016 Study as there is low capacity for very large turbines and insufficient separation with Langhope Rig
- Remaining significant impacts from public roads such as the A7, B711 and Ashkirk to Robertson Road.
- Detrimental impacts including on literary association at the Wm Ogilvie Cairn
- Scheme too similar to the previous scheme rejected by the Council and Reporter with an increase in turbine height. It must be compared with the previous scheme.
- SNH continue to maintain concerns over the revised scheme on landscape impact. Their lack of objection is normal and should not be overstated in weight.
- The applicant's challenge to the SNH position was lodged late in the process denying them sufficient response time.
- SNH do not normally visit the site and no indication they did in 2012.
- Impacts on the proposed National Park including pressure on areas outside the proposal
- Detrimental impacts on tourism and local tourist businesses in the area, including walkers, cyclists, horse riders and recently established tourist businesses and initiatives
- Contrary to the Scottish Borders Tourism Strategy.
- Challenges to the Biggar Economics Report, claiming increased economic detrimental impacts on the local economy including on property values
- Inadequate and unsafe road capacity for large construction traffic including the B711, on bridges and through Denholm Village
- Challenges to the need argument, identifying that the MW contribution is small and does not outweigh other impacts, being contrary to SESPlan.
- Wind energy is inefficient and unsustainable.
- Carbon reduction claims are questionable and unnecessary given the carbon position in Scotland
- Significant detrimental residential amenity impacts on several properties, especially Easter Ale Moor. The turbines remain too close and dominant, one being within 1.2km and five within 2km. No photomontages have been produced and inadequate assessment from unrealistic wireline position, underestimating impact. Example alternative photomontages provided.
- Lack of recognition of impacts on living and working on a hill farm in very close proximity, quoting the Minnygap appeal decision.
- Detrimental noise impacts above regulation limits and little or inadequate mitigation
- Shadow flicker impacts.

- Criticisms of the lack of objection from SBC Landscape Architect including inadequate assessment of residential impacts
- Detrimental impacts on hydrology and private water supplies, especially at Easter Ale Moor from turbine foundations, access tracks, borrow pits etc
- Criticisms of Scottish Government Energy Policy and Targets, stating that UK Policy is now for no more on shore large scale wind farms, that by Dec 2017 there was already 20.9GW consented surpassing the 16GW 2020 target and that the main issue remaining is the speed of implementation of developments. Interim target of 50% already surpassed.
- Further updated showing consented and operational scheme capacity increases since 2013, rising by 87% to 19.1GW for consented, by 102% to 8.7GW for consented but not operational, by 76% to 10.4GW for operational and by 56% to 11.9GW for operational and under construction. Only 12.2GW is needed to reach the 2020 target.
- The Scottish Energy Strategy states that renewable energy generation could rise to 140% of Scottish electricity consumption by 2030, in the region of 17GW
- Need arguments against other adverse effects are of less weight given the progress towards renewable energy targets.
- Scheme would be so restrained by suspensive conditions that it could not help meet the 2020 target.
- Constraint payments are still in place and wind energy remains subsidised, other forms of energy production needing to be utilised instead
- Detrimental impacts on archaeology especially Scheduled sites at Leap Hill and Kemp's Castle.
- Detrimental impacts on bird populations, especially black grouse, osprey, goshawks and other protected species
- Detrimental impacts on local wildlife sites including red squirrel
- Unresolved and sustained MOD issues, there being no control over the suggested suspensive condition which awaits works at Deadwater Fell
- Any condition regarding radar mitigation should be fully suspensive as SBC insisted at Gilston
- Detrimental impacts on telecommunication
- New wind farms are permanent and ground reinstatement may not occur
- Local employment opportunities are not created by wind farm construction
- Detrimental impacts on health
- Inadequate community consultation
- Local community small but largely opposed to the scheme
- Community Fund is very limited and specific to access
- New planting should be used to screen the development

Support:

- Impacts are exaggerated from minor roads
- Conifer plantations have greater impact
- Scheme necessary to counteract global warming

**APPLICANTS' SUPPORTING INFORMATION**

This full planning application is an EIA Development and is supported by a full Environmental Statement (ES) resulting from an Environmental Impact Assessment, which comprises the following documents, dated August 2017:

- Pre-application Consultation Report
- Design and Access Statement

Environmental Statement:

- Non-Technical Summary
- Volume 1: Main Statement
- Volume 2: Annexes A-K
- Volume 3: Figures
- Volume 4: Visualisations
- Confidential Appendices on Ecology/Ornithology

During the course of the application process, additional responses have been received from the applicant, notably the following:

- Archaeology letter and figures – 5 Dec 2017
- Ecology letter and figures – 7 Dec 2017
- Residential Amenity letter and comparative wirelines – 9 Feb 2018
- Response to Forestry Commission – 15 Mar 2018
- Supporting Statement – 14 Aug 2018 – this document summarises the key material considerations and how they should be considered by the Council in the overall planning balance. It concludes on:
  - the absence of unacceptable environmental effects;
  - the accordance with Scottish Government planning and energy policy;
  - the demonstrated need for the low carbon energy, such as the proposed development would provide, to contribute to legally binding Scottish Government targets for 2020, for which there is a significant shortfall;
  - the accordance with the Council's adopted and emerging spatial strategies for wind energy;
  - the successful addressing of the reasons for dismissal of the appeal for the 2012 application.

## **CONSULTATION RESPONSES:**

The following consultation responses have been received in respect of the application. The responses are available to view in full on the Council's Public Access System.

### **Scottish Borders Council Consultees**

**Landscape Architect:** No objection to the application, given the number of significant effects is relatively small, there is new spatial guidance and Langhope Rig has created precedence for wind turbines in this landscape character area.

Consideration is given to LDP Policy ED9, the SBC Draft SG on Renewable Energy and the incorporated 2016 Wind Energy Landscape Capacity Study by Ironside Farrar. The latter identifies low capacity for larger turbines over 120m but does identify some, provided cumulative issues with Langhope Rig are overcome.

Also assesses the application against the 2017 SNH Guidance "Siting and Designing Windfarms in the Landscape". Identifies the landscape character as being appropriate, that there are no particular designations but various scenic viewpoints and that there are certain viewpoints and sections of the minor road and B711 where

there will be impacts. Also identifies significant effects on some residential receptors and notes improved design compared to the previous scheme. Considers there to be a high degree of landform containment and suitable larger landscape scale, albeit this is more localised around Alemoor Reservoir in particular. Then considers relationship with Langhope Rig, noting there is separation between the two schemes and little coincident view, with turbines appearing of similar height in any combined views. There is an impact on focal point from Viewpoint 6 but, overall, the cumulative impacts are accepted.

Compares the changes in the revised scheme to impacts experienced in the previous scheme. Considers that there is a reduction in landscape and visual effects overall, albeit the impacts from the William Ogilvie Cairn and Ashkirk to Robertson road remain significant. Given the improvements in the scheme overall, wary about such localised impacts justifying refusal of the scheme. Also considers there to be some improvements from the viewpoints cited in the appeal decision, with one turbine being removed and the remainder being sited further away from Viewpoints 1, 2 and 6, albeit the turbines are higher. There is also better balance and reduction in stacking from Viewpoint 2.

Clarifies that, at the time of his response, the 2016 IF Study had not yet been adopted within Supplementary Guidance and that the 2013 Study would carry much more weight, albeit both indicating some capacity for very large turbines. Reiterated that neither IF Capacity Study was available at the time of the original Barrel Law consideration but there is now identified capacity. The new scheme reduces the adverse effects from the previous scheme at several key viewpoints, there being modest but noticeable improvements in design and magnitude. Maintains there are insufficient grounds to oppose the application on landscape and visual impacts.

**Flood Protection Officer:** The site is at risk of a 1 in 200 year flood event but largely from several small watercourses within the site. Risk is considered minimal provided various mitigative measures are undertaken such as run-off attenuation to compensate for new hard surfaces, silt trips to minimise entry of sediment into watercourses, storm capacity culverts and adequate provision for protection of hydrology in the Construction Method Statement and Environmental management and Monitoring Plan.

**Roads Planning Service:** No objections as the development will use the previously improved route to Langhope Rig. Conditions should require agreement over swept path analyses which may require further improvements given the larger turbine size, consultation with Police Scotland over transporting of abnormal loads, a Traffic Management Plan, details of the grid connection and pre/post construction surveys of road condition, especially of the road from the A7.

**Environmental Health:** No objections. There should be a condition requiring a scheme of mitigation to protect private water supplies. In terms of noise, no objections to the assessments that have been undertaken, noting one property could experience noise above agreed limits as well as from impacts with Langhope Rig. A condition will require mitigation for this property. In terms of construction noise, predicted levels will be below the agreed noise threshold and a Construction Method Statement can be controlled by condition.

**Access Officer:** Right of Way BE132 from Ettrickbridge passes through the site as well as clear visibility from several noted routes such as the Borders Abbays Way and the Cross Borders Drove Road. Notes that the ES states good practice will be followed during construction and this should include agreement of a Path Planning



Study, no obstruction to the right of way at any point and the availability of new tracks to the public once the development is complete. If approved, £3000 be secured per annum through Legal Agreement towards the promotion and management of the wider path network in the area.

**Ecology Officer:** Serious concerns over the adequacy of the Environmental Statement in relation to impacts on bats. Whilst SNH had advised the applicants over the lack of need for updated surveys for certain species, this should not apply to bats. The presence of shelter belts and potential connectivity to other plantations and the Todrig Burn, together with stand-off justification for turbine 6, determine that further updated bat surveys are required.

The Habitat and Management Plan also requires to be more detailed, especially in relation to heathland and grassland measures and there needs to be evidence that the mitigation can be delivered on or off site within the developer's control.

All other matters could be controlled by condition (and legal agreement if required) safeguarding such interests as otter, badger, red squirrel, lizard, fish and ornithology, including black grouse, curlew, goshawk, osprey and red kite. The conditions would include appointment of an Ecological Clerk of Works, a Construction Environmental Management Plan, Species Protection Plans, Habitat Management Plan, an ecological monitoring programme and various restoration measures.

Whilst maintaining concerns over adequacy of ES in relation to bat impacts, notes the acceptance by SNH of the surveys and concludes that impacts on bats not significant. Welcomes additional information on stand off distance for Turbine 6, habitat loss and the Habitat Management Plan commitment.

**Archaeology Officer:** Does not recommend refusal but has concerns regarding impacts on the setting of the Scheduled Monument of Kemp's Castle, noting that the ES identifies moderate significant and adverse effects. Particular impacts on the Ale Water valley viewed from the Monument, especially Turbine 5 which "overtops" the setting and head of the valley. Notes that HES also have concerns over this impact. Recommends that the Turbine be relocated to avoid the impacts but also notes that any adverse impacts must be weighed against other impacts under LDP Policy ED9 in the overall planning balance. Direct impacts on known and unknown archaeology can be covered by a condition requiring a Written Scheme of Investigation.

Upon receipt of more detailed information, agreement regarding direct impact mitigation and most comments regarding the setting of Kemp's Castle. However, disagreement remains over setting impacts on the Ale Water valley, considering Turbine 5 still to encroach adversely. Still maintains removal or relocation of Turbine 5 but does not object to the application, requiring assessment in the overall planning balance.

**Forward Planning:** Supports principle of renewable energy under SPP and SESPlan whilst ensuring environment is protected. Development needs to be assessed against LDP Policy ED9, including landscape and visual impacts and consideration of the 2013 Ironside Farrar Landscape Capacity guidelines. This identifies the landscape character type as having capacity for addition, updated by the 2016 Study which states low capacity for very large turbines above 120m. Little weight attached to the 2016 Study until it is incorporated into approved Supplementary Guidance. Also consider the Reporter decision on Barrel Law 1.

## **Statutory Consultees**

**SEPA:** Initially objected due to lack of information on peat and potential impacts on groundwater and private water supplies. Prefer the handling of peat to be detailed at this stage rather than by Construction Method Statement, concerned that there is no information about what is intended with unused soil/peat that is excavated and risks to the water environment. Lack of information over impacts on groundwater terrestrial ecosystems and uncertainty over precise location of Easter Ale Moor private water source. Also provides advice on borrow pits, water crossings and the content of the required Construction Environmental Management Plan.

Further clarified that information was still required in relation to impacts of the turbines on Groundwater Dependent Terrestrial Ecosystems, especially Turbines 3, 6 and 7. A condition could cover impacts on the other turbines together with access tracks. Subsequently considers additional information and believes that groundwater issues can be addressed by normal micro-siting and linking with the Ecological Clerk of Works condition, albeit additional survey work still required for Turbine 3 and micro-siting mandatory if the survey demonstrates necessity. Withdraws objection on basis of suitable condition. Also withdraws objections based upon conditions covering peat management and private water supplies.

**Historic Environment Scotland:** No objections. Key interests relate to impacts on the Scheduled Monuments of Leap Hill and Kemp's Castle, being content that the ES has provided the necessary information to enable full assessment. Impacts on both monuments are minor to moderate but do not adversely affect setting to warrant objection. Impacts on Leap Hill slightly greater than suggested in the ES and greater cumulative impact but still not sufficient to warrant objection. Several comments on setting assessment and reversibility of the scheme.

**Scottish Natural Heritage:** Some improvements to siting and design over original scheme but most of the significant and adverse effects still occur in relation to landscape and visual effects, namely from the William Ogilvie Cairn, minor road nearby, from Ale Moor Reservoir, from short stretches of the B711 and from combined impacts with Langhope Rig.

From the Cairn and minor road, the impacts have been reduced due to movement further north and location behind the ridgeline, together with better spacing and design producing a uniformity of tip height. However, the focus of the view and the large blade diameter still cause adverse landscape impacts and visual effects, especially combined with Langhope Rig.

From Ale Moor and the B711, whilst improvements have occurred around Viewpoints 1 and 2 and there is more compaction and coherence of design, adverse impacts still occur resulting from the larger blades and the heights will still be the same as the original proposal. There remain significant and adverse impacts on character and tranquillity.

There remain significant adverse effects on landscape character and visual amenity arising from cumulation with Langhope Rig, especially from Viewpoints 1 and 2 and at 13 and 17 from Ashkirk village. From middle and further distances, the revised scheme integrates better with Langhope Rig.

In terms of other issues, there will be no significant impacts on the River Tweed SAC subject to mitigation, an area of deep peat can be avoided by re-routing an access

track and there are no objections on ecology or ornithology grounds, welcoming the improvements to habitat aimed at supporting the black grouse population.

**RSPB:** No objections. Content with the survey work which accommodates previous surveys. Black Grouse are present on site and given the fragility of the population, mitigation should be provided for any loss of habitat or disturbance in liaison with SBC Ecology. Support the mitigation in the ES controlled by conditions, including the need for a Habitats and Species Management Plan.

**NERL:** No safeguarding objection to proposed scheme but only represents management of en route air traffic.

**Edinburgh Airport:** No objections as outside of airport safeguarding zone.

**Scotways:** Response awaited.

**Forestry Commission Scotland:** Initial objection on the basis of lack of information on road construction through the existing forest, compliance with the Control of Woodland Removal Policy and impacts on the Hyndhope Forest Plan. Following receipt of further information, withdraws objection and considers the development would comply with the Control of Woodland Removal Policy.

**Ministry of Defence:** Initial Objection. Scheme will be detectable from and cause unacceptable interference to the ATC radar at RAF Spadeadam, creating confusion in the management and separation of military and civilian aircraft. This includes restrictions on arrival/departure routes into the range, restriction on aircraft operating areas, ZONE traffic patterns, entry/exit from the Low Flying System and frequency of provision of the Traffic Service and Deconfliction Service. They also comment that research is ongoing into solutions and suggests the developer consider mitigation.

Was also concerned that there would be further erosion of the Low Flying Area which is used to train against radar systems at Spadeadam and that there may be interference against threat radar at Wigg Knowe. If all these issues can be overcome, requests infra-red or omni-directional red lighting at the highest practicable level.

Following further discussions and consideration, withdraws objections on threat radar and low flying impacts, provided the turbines are fitted with omni-directional or infra-red lighting at the highest practicable point. Further consideration of technical mitigation with regard to impacts on the ATC radar at RAF Spadeadam then led to withdrawal of the objection as the MOD considered the proposed mitigation to be acceptable in principle. However, their suggested condition is partly suspensive requiring no turbines to be erected until an ATC Mitigation Scheme is submitted, approved and implemented. The MOD wishes to stress, however, the time and cost implications of delivering an acceptable mitigation scheme.

**Scottish Water:** The site falls partly within the drinking water catchment of Ale Moor reservoir which is a protected area supplying Robertson Water Treatment Works, the access track and perhaps borrow pits impinging on, or very close to, the boundary of the catchment. The exact boundary and extent of impinging would need to be determined on site. Request that any development be moved outwith the catchment but recommend mitigation if not practicable. Any Scottish Water assets should be safeguarded and mitigation complied with after contact with Scottish Water.

Following further information, now satisfied borrow pits are outside Ale Moor catchment but information should still be given to contractors about water catchment

impacts. Adequate water protection measures maintained along shared access route with Langhope Rig.

**Visit Scotland:** Any potential detrimental impacts on tourism be identified and considered fully, given the importance of the landscape, scenery, the natural environment and tourism to the Scottish economy. This should be via an independent tourism impact assessment and should take account of the 2008 Government research on wind farms and effects on tourism. There should also be consideration of tourist traffic routes, numbers, views from accommodation, scale of the impact, views of local organisations and any positives from the development.

**Association for the Protection of Rural Scotland:** Response awaited.

**Scottish Wildlife Trust:** Response awaited.

**Scottish Badgers:** Staff to be aware of badgers crossing access tracks in the early morning/evening, the Ecological Clerk of Works to secure dangerous materials nightly and though there may be some badger presence in nearby woodland, it is sufficient distance away.

**Lilliesleaf, Ashkirk and Midlem Community Council:** At a public meeting, 19 were against the development and 4 were in support. Those against cited adverse visual impacts, precedent and cumulation. Those in favour cited community income. A postal survey resulted in 33 in support and 28 against.

**Upper Teviot and Borthwick Water Community Council:** Oppose the proposals for following reasons:

- Significant cumulative impact with Langhope Rig
- Dominant visual impact from the B711, Ashkirk to Robertson Road and Right of Way.
- Detrimental impacts on residential amenity, especially Easter Ale Moor, being 1200m away from the house. Significant visual impact, potential breaching of noise limits, shadow flicker to farmland and previous rejection at appeal.
- The B711 cannot cope with the impacts of increased construction and HGV traffic.

Still consider the changes to be minor to a previously rejected scheme. Disappointed at the contact from developer in the consultation process pre-submission.

**Ettrick and Yarrow Community Council:** Dissatisfied with Council over sufficient consultation time and with developer over community engagement. Some residents support the proposal in terms of green energy with less impact than other forms of electricity generation. However, twice as many residents oppose the development for reasons of detrimental impact on the environment and tourism, inefficiency of energy source, reduced community benefit and MOD impacts.

**Hawick Community Council:** Remains opposed to the revised scheme and supports the objections from adjoining Community Councils. Significant cumulative effect with Langhope Rig, highly prominent from the B711 to locals and tourists and impacts from construction traffic adding to HGV use of the B711.

**Denholm and District Community Council:** Opposed to the application for reasons of detrimental visual impact, cumulative impacts with other proposed wind farms and potential impacts/damage caused by construction traffic to local roads and houses.

**Southdean Community Council:** Disappointed at the resubmission which is little different from the previous refused scheme. Objects due to visual impacts from Abbotrule area and especially from Carter Bar, considering the ES understates the visibility of both Langhope Rig and the proposal. Cumulative impacts also understated, there being 189 turbines proposed. Backs the objections on residential impacts.

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

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

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

##### **SESplan Proposed Strategic Development Plan 2017:**

Figure 4.2: Onshore Wind Spatial Framework

##### **Local Development Plan 2016:**

PMD1: Sustainability  
PMD2: Quality Standards  
ED9: Renewable Energy Development  
HD3: Protection of Residential Amenity  
EP1: International Nature Conservation Sites and Protected Species  
EP2: National Nature Conservation Sites and Protected Species  
EP3: Local Biodiversity  
EP5: Special Landscape Areas  
EP7: Listed Buildings  
EP8: Archaeology  
EP9: Conservation Areas  
EP10: Gardens and Designed Landscapes  
EP13: Trees, Woodlands and Hedgerows  
EP15: Development Affecting the Water Environment  
IS2: Developer Contributions  
IS5: Protection of Access Routes  
IS8: Flooding

#### **OTHER PLANNING CONSIDERATIONS:**

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

- Renewable Energy 2018
- Wind Energy 2011
- Biodiversity 2005
- Local Landscape Designations 2012
- Developer Contributions 2011
- Visibility Mapping for Windfarm Development 2003

- Ironside Farrar Study on Wind Energy Consultancy Landscape Capacity and Cumulative Impact 2016
- Borders Landscape Assessment 1998 Ash Consulting Group

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

- The Climate Change (Scotland) Act 2009
- The Scottish Renewable Action Plan 2009
- 2020 Routemap for Renewable Energy in Scotland – Update 2015
- National Planning Framework for Scotland (3) June 2014
- Scottish Planning Policy (SPP) June 2014
- Scottish Planning Policy and Electricity Generation Policy Statement
- Onshore Wind Turbines – Planning Advice 2014
- Climate Change Plan 2018
- Onshore Wind Policy Statement 2017
- Scottish Energy Strategy 2017
- Climate Change (Emissions Reductions Targets) (Scotland) Bill 2018

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

- Circular 1/2017 Environmental Impact Assessment (Scotland) Regulations
- PAN 69 Flood Risk 2015
- 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
- Scottish Government Good Practice Principles for Shared Ownership of Onshore Renewable Energy Development 2016

#### **Historic Environment Scotland Publications:**

- Historic Environment Scotland Policy Statement June 2016

#### **SNH Publications:**

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

#### **Other Publications:**

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

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

- Land use planning policy;
- Landscape and visual impacts, including landscape character and visual impacts, arising from turbines and infrastructure;

- Cumulative landscape and visual impacts with other wind energy developments;
- Physical and setting impacts on cultural heritage assets;
- Residential amenity including noise impacts and shadow flicker
- Ecological, ornithological and habitat effects;
- Impact on road safety and the road network;
- Impacts on the public path network and public access on accessible land;
- Impacts on defence and aviation
- Economic benefits attributable to the scheme;
- Benefits arising from renewable energy provision.

## **ASSESSMENT OF APPLICATION:**

### **Comparison with previous scheme**

Although the planning application could be considered as a revised scheme for one rejected by both Scottish Borders Council and on appeal to the Scottish Government, the application must primarily be tested against all current national and local Policies and Guidance pertaining to a wind farm in this location. The applicant stresses this point in their Supporting Statement with regard to the SNH response, in particular. However, given the similarities with the rejected scheme, the manner in which the scheme addresses the previous reasons for refusal will clearly also be of material significance in determining the acceptability, or otherwise, of this application. This report will, therefore, assess both the scheme in its own right and also the degree to which the revised scheme addresses the previous reasons for refusal and whether, or not, they have been sufficiently addressed that, after assessment against current Policies and Guidance, there is adequate justification to reverse the previous decisions of the Council and Government Reporter.

The impacts of the previous decisions and the changes and design iterations to the revised scheme are fully described by the applicant in the ES and, particularly, in the Design and Access Statement. This comparison was requested by the Department in the Scoping Opinion preceding the submission of the revised application. The reasons for refusal of the initial scheme are included in full in the Planning History section of this report. The applicant considers that the new scheme meets the following design objectives, taking into account the previous reasons for refusal:

- Minimise the prominence and vertical impact of turbines as seen on key skylines and in key views
- Ensure that the wind farm is associated with the upland landscape character and avoid encroachment into more complex, smaller-scale surrounding landscapes
- Create a balanced and cohesive appearance for the wind farm and a good fit with the landscape
- Minimise visual effects on residential properties
- Manage cumulative effects with Langhope Rig wind farm

The Design and Access Statement details the different design iterations responding to these objectives and leading to submission of the current scheme. The difference in turbine locations is highlighted in Drawing DAS 2 and in visual impact through wirelines DAS 4.1-4.5. One turbine has been removed and the southernmost turbines have been moved 350m north to be north of the summit of Lamb Knowe. Generally, the northernmost turbines have also moved north slightly, the whole site boundary shifting north but still overlapping partially with the original site boundary, especially

at the site access point. All seven turbines are, therefore, in different positions to the refused initial scheme of eight turbines. In terms of lateral spread east to west, there has been a very slight reduction to the west and a more significant reduction in the easternmost extent of the turbines.

In terms of the AOD ground level of the turbine bases, the refused scheme proposed eight turbines in a range from 329m to 374m. The new scheme ranges from 317m to 359m. However, to ensure a viable project, the remaining seven turbines have increased in tip height from 125m to 132m, the rotor diameter increasing from 90m to 112m, the hub height dropping slightly from 80 to 76m to accommodate the larger diameter.

The Design and Access Statement, at para 2.34, considers the effects of these changes compared to the initial refused scheme, to be as follows:

- Turbines not on skyline ridges and behind landform such as at Wm Ogilvie Cairn and Ale Moor Reservoir
- Reduction in extent across all views
- Better association with upland landscape and avoidance of encroachment on smaller scale landscapes
- A more unified design not straggling down slopes and less overlapping and gapping from key views
- Significant improvements in residential amenity impacts on Easter Ale Moor, Wester Ale Moor and Blaewearie through reductions in prominence, vertical impacts and extent
- Consistency with Langhope Rig within the same upland landscape character type, maintaining separation and occupying similar AOD base heights and range

The initial Barrel Law scheme was also refused by the Council, then rejected on appeal, for adverse impacts on both the Eskdalemuir Seismological Recording Station and the Deadwater Fell ATC Radar at RAF Spadeadam. The Ministry of Defence had maintained objections on that scheme. The Government Reporter had also visited RAF Spadeadam before determining the appeal.

The applicant has addressed aviation and defence in Annex K of the ES. It concludes that the issue over distance from Eskdalemuir was resolved in 2014 with acceptance that the noise budget could cope with cumulative impacts from 15-50KW. On the issue of Deadwater Fell, the applicant believes the new radar installation in 2016 has led to acceptance of impacts from the proposed, and other developments, as not being significant. The planned replacement of this radar with a new version in 2019 will further reduce impacts due to mitigation built into the design.

The application, whilst being properly assessed in its own right against current relevant policies and Guidance governing wind energy development, must also be examined against the initial refused scheme and, in particular, the claimed changes and improvements made by the revised scheme in how it addresses the previous reasons for refusal and rejection on appeal.

### **Planning Policy**

Scottish Government policy, regional strategic policy and local planning policy and guidance all support renewable energy, including wind farms, provided that there are no unacceptable and significantly adverse environmental impacts.



SPP sets out a Spatial Framework for determining appropriate sites for wind farms. The SPP states three classifications. Area 1 where wind farms are not acceptable in principle i.e. within National Scenic Areas and National Parks. Area 2 which reflects areas of significant protection including SSSIs, GDLs, Wild Land, settlements within 2km etc. The site, however, falls within Group 3 which suggests the remainder of all areas have potential for wind farm development “..where wind farms are likely to be acceptable, subject to detailed consideration against identified policy criteria.”

SESplan policy 10 requires Local Development Plans to set a framework for the encouragement of renewable energy proposals that aims to contribute towards achieving national electricity and heat targets and taking into account economic, environmental and transport considerations.

These Policy documents have recently been supported by the statements in the Onshore Wind Policy Statement 2017, the Ministerial Foreword confirming clear support for wind energy, promoting the economic benefits it offers, helping to substantively decarbonise electricity supplies, heat and transport systems, boosting the economy, and meeting local and national demand. It identifies that all need to work together to ensure that projects continue to strike the right balance between environmental impacts, local support, benefit, and – where possible – economic benefits deriving from community ownership.

Similarly, the Scottish Energy Strategy is also a material consideration, setting out ambitious new energy targets of 50% of the energy for Scotland’s heat, transport and electricity consumption to be from renewable sources by 2030 and an increase of 30% in the productivity of energy use across the Scottish economy.

Nevertheless, all Policies and Guidance still require development to be assessed on a case by case basis and only development in the right places will be supported. This report will need to consider, firstly, whether this development is in the right place, by considering the locational and landscape capacity guidelines that are in place, both at national and local level, before going on to consider the particular environmental effects of the proposed development.

All planning applications must principally be determined in accordance with the Development Plan unless there are other material considerations indicate otherwise. The proposal has to, therefore, be assessed against a number of Local Development Plan policies. Policy ED9 is the principal Policy dealing with renewable energy development and supports commercial wind farms where they can be accommodated without unacceptable significant adverse impacts or effects, giving due regard to relevant environmental, community and cumulative impact considerations. Proposals will be approved provided that there are no significant effects that cannot be satisfactorily mitigated. Where mitigation is not possible, the development will only be approved if the Council is satisfied that the wider economic, environmental and other benefits outweigh the potential damage arising from it. The policy contains a number of criteria by which to assess the proposal.

The Council’s Supplementary Planning Guidance on Wind Energy 2011 contains a Spatial Strategy and the site is located partially within an area Minor Constraints and an area of Moderate Constraints (Higher) with a very small area of Moderate Constraints (Lower). Rubers Law, Drinkstone Hill, Hartwoodmyers, Fastheugh Hill and Pikestone Rig are identified as being scenic viewpoints in the area.

However, the 2011 SPG is now accepted as being updated and superseded by the 2018 “Renewable Energy” Supplementary Guidance which was recently approved by the Council and, subsequently, the Scottish Government. This contains a new Spatial Framework which demonstrates that the site lies within an “area with potential for wind farm development” and also within the area identified with the “Highest Capacity” for wind turbines.

Having assessed the proposal against national and local spatial framework considerations for wind farm development, the site is not located within an area which would automatically preclude the development of a wind farm. Indeed, it lies within a broader zone of “Highest Capacity” identification that runs south-west from the area containing Langhope Rig to the boundary with Dumfries and Galloway Council. The precise impacts of the proposal must, of course, be assessed in detail against the relevant Local Development Plan policies to establish whether the proposal is acceptable, informed by the more specific locational Landscape Capacity and Cumulative Impact Studies produced by Ironside Farrar in 2013 and 2016, the latter version now being the Study against which any application should be assessed.

It should be noted that at the time of determination of the initial Barrel Law scheme, the principal Local Plan policy in place (D4) was different to the terms of LDP Policy ED9. The current Policy reflects present national energy policy in that the wording and threshold for assessment of effects is worded to specify support unless there are “*unacceptable significant adverse impacts or effects*”. The introduction of the word “*significant*” indicates that adverse impacts can occur that could still be acceptable in the overall planning balance but also that “*significant adverse impacts*” could also still be considered acceptable and comply with ED9. This is considered to be a notable change in the weighting and wording of the current LDP Renewable Energy Policy.

## **Landscape and Visual Impacts**

Policy ED9 requires consideration of the landscape and visual impacts, including the effects on wild land and the cumulative impact, taking into account the Ironside Farrar Landscape Capacity and Cumulative Impact Study as well as guidance from Scottish Natural Heritage. At the time of writing this report, the final approval of the Scottish Government has just been received for the “Renewable Energy” Supplementary Guidance, thus the advice contained within it in relation to landscape and visual impacts should be given significant weight. This should also now include consideration of the updated 2016 version of the Ironside Farrar Landscape Capacity and Cumulative Impact Study and the same weight given to its conclusions in relation to the site and the proposal. It should be noted that the decision by the Council and Reporter on the initial scheme at Barrel Law pre-dated the Ironside Farrar studies.

### Landscape Character

In terms of the Borders Landscape Assessment 1998 the site lies within Landscape Character Type (LCT) BDR4(ii): Southern Uplands Type with Scattered Forest Dun Knowe. This is a larger scale upland landscape covering much of the south-western area of the Borders although there is some variation in character. The key characteristics are listed as:

- Large scale rolling landform with higher dome or cone shaped hills
- Significant areas of peatland and heather moorland
- Mosaic of grassland, bracken and rushes on lower ground
- Locally prominent scattered large coniferous plantations

The site is within 5km of other Landscape Character Types, including BDR5(i) (Upland Type), BDR10(i) and (iv) (Upland Fringe Types) and BDR26(v) and BDR28(ii) (River Valley Types), shown in Figure A3b of the ES. Figure A9b demonstrates a ZTV with Landscape Types overlaid within 20km. This demonstrates a relatively limited visibility from these other Landscape Character Areas which indicates limited influence on their respective characters.

Whilst the overall character of the landscape is large scale, it was identified in determination of the initial scheme at Barrel Law that there were substantial variations. The Reporter identified that significant Viewpoints demonstrated differences in scale. Viewpoint 1 at Alemoor Reservoir was medium scale in his opinion whilst Viewpoint 2 at Wester Alemoor varied from open moorland on the ridgeline to domestic scale in the middle ground. Similarly, Viewpoint 6 at the William Ogilvie Cairn site demonstrated a middle ground upland valley landscape compared to an open moorland ridgeline backdrop. Clearly, any wind farm development would have to be assessed against not only the actual and prevalent landscape character types but also the variations of landscape scale within the same character types.

The site is not one of the nationally designated areas of Wild Land, being nearly 20km from the designated Talla/Hart Fell WLA. Figure A5. Figure 3.6 of the Ironside Farrar Study and Figure A5 of the ES do indicate a comparative degree of wildness in the middle range. The site is 11.5km away from the nearest Special Landscape Areas of the Teviot Valley, Tweed, Ettrick and Yarrow Confluence and 12km from The Tweedsmuir Uplands. Although there is some public support for the designation of a Scottish Borders National Park, there are no policies within the Local Development Plan relating to a national park and so this cannot be taken into account in assessing this application.

### Landscape Capacity

As mentioned above, the Ironside Farrar Landscape Capacity and Cumulative Impact Study July 2013 is referred to within policy ED9 and the updated version is a material consideration in respect of this application. The applicant accepts the materiality of the Study in para.25 of Annex A of the ES. The Study uses the Borders Landscape Assessment to assess the suitability of each landscape type for differing turbine typologies. It is also incorporated within the “Renewable Energy” Supplementary Guidance which also advises other guidance to be considered. These include publications by SNH “Siting and Designing Windfarms in the Landscape Version 3” 2017 and “Assessing the Cumulative Impact of Onshore Wind Energy Developments” 2012. Local Development Plan Policy, Supplementary Guidance and relevant guidance notes must all be used to assess the landscape impact and visual effects of the development. The Council Landscape Officer’s consultation replies are included in full on the Public Access website and use the Policy and guidance in assessing the landscape impact of the proposal.

The purpose of the 2016 Ironside Farrar Study is “...to determine the landscape capacity of (the) Scottish Borders to accommodate wind energy development and to determine the levels of cumulative development that would be acceptable across the local authority area.”

The application site is covered in the 2016 Ironside Farrar Study at Table 6.1(iii) covering the Central Uplands. The Landscape Character Type 4DKG (Dun Knowe Group) is classified as having a ‘low capacity’ for turbines, defined as being over

120m high to blade tip. In terms of difference from the 2013 Study, the same Landscape Character Type was then classified as having a 'medium capacity' for very large turbines defined as over 100m to blade tip.

When previously challenged on the issue of how much weight to attach to the more recent Study, the Council Landscape Officer accepted that greater weight needed to be attached to the 2013 Study which forms part of the adopted Local Development Plan. This was also the view of the Forward Planning Section although now that the Supplementary Guidance has been approved by the Council and Scottish Government, the 2016 Study must now be the relevant document used for assessment purposes.

It is useful, however, to note that in both versions of the Study, the site lies within an area identified as having some capacity for the largest scale of wind turbines. It is also a material fact to note that neither the Council nor the Reporter had access to either Landscape Capacity Study at the time of determination of the initial Barrel Law scheme.

The 2013 Study identified Langhope Rig and reflected the (undetermined at the time) Barrel Law application, acknowledging that there were no landscape designations, long distance footpaths and little human settlement. The Study considered that the surrounding topography provided a degree of containment for large and very large turbines and that intervisibility within the area was fairly low. The Study concluded that the *"... Dun Knowe Group has limited existing turbine development and can accommodate additional development of medium, large and very large turbines"*. It went on to state that the *"...area could form part of a new cluster of turbine development as long as the spaces surrounding this new cluster are maintained free of turbine developments"*. There was a minimum group separation advised of 5-10km but this would not necessarily refer to separation between wind farms but could also refer to separation between areas of wind farms and the space inbetween. The idea of cluster and space is, however, less prevalent in the 2016 Study although minimum areas of separation are stated.

The 2016 Study also identifies the area as having some capacity for very large turbines in the Dun Knowe Group area. The terminology has changed to define height thresholds for turbines and the amount of capacity has dropped from "Medium" to "Low". The commentary also recognises that cumulative impact with Langhope Rig was one of the reasons the initial Barrel Law scheme was rejected and that "significant separation" and "careful siting" would be necessary. Nevertheless, it clearly identifies that the Dun Knowe Group could accommodate a further 5-10 turbines above 120m in height to blade tip, in addition to the existing Langhope Rig turbines. Whilst it is appreciated that statements have been made about keeping significant separation with Langhope Rig, the reference to 5-10km between groups is unlikely to actually be achievable within this Landscape Character Type Area, given that it is a relatively modest area.

Even more modest is the oval area within the Dun Knowe Group identified with capacity for additional 120m plus turbines. This oval area is less than 10km in length and less than 5km in width and already contains Langhope Rig. Whilst it is appreciated that the boundaries of such identified areas are not meant to be precise, it would still be almost impossible to maintain the minimum separation from Langhope Rig and still be within the area identified as having low capacity – without

straying into surrounding less suitable landscapes having no capacity. It, therefore, has to be concluded that the “group” should refer to Langhope Rig and Barrel Law, there being at least 5-10km between that group and any other turbine groups intended in the vicinity – a separation that could be maintained given that the surrounding area is viewed as having no capacity. It is hard to draw any other conclusion than 5-10 turbines in, or close to, the application site is permitted by the Landscape Capacity Study.

It is understood that the guidance could be interpreted in different ways with regard to separation but what is consistent between the 2013 and 2016 Studies is the identification of capacity for a wind farm of the heights and scale intended at the current Barrel Law site. The separation from Langhope Rig, if indeed that is what is intended by the minimum group separation distances in the 2016 Study, is discussed further throughout this report, particularly with regard to design and cumulative impact. It will be concluded that sufficient separation would exist between the two wind farms and that with design and coverage improvements, the identification of capacity for further turbine development by successive Ironside Farrar Studies is of material significance in reassessing the acceptability of a wind farm on the application site.

These Studies and their identification of capacity were not available at the time of the initial Barrel Law application assessment and determination. The Council and Reporter decisions were taken without the benefit of the Study results. Any decision on the current revised application should take into account the Study findings as a material factor in any decision, whilst still properly examining the detailed landscape and visual amenity effects anticipated by the development.

### Theoretical Visibility

In assessing effects on landscape character, the Council’s Landscape Architect advises that it is helpful to focus on those areas which are affected directly by the development i.e. focus on those areas which have a clear view of the development.

The Zone of Theoretical Visibility (ZTV) Maps (Figures A7a to A12b) illustrate the potential visibility of the turbines to hub height and blade tip height within 20km and 40km zones and the extent of landform containment. Further ZTV maps are submitted showing potential impacts on Landscape Character, Landscape Designations, Wild Land, Tourism and other Principal Visual Receptors. There are also a series of ZTVs showing potential cumulative impacts (Figures A15a-A15w). The main visual impacts can be expected at the closer range and so the assessment focusses on the 20km range.

The Council’s Landscape Architect assesses the overall visibility of the proposed wind farm using the ZTV maps and concludes that, in terms of landform, there is a fairly high degree of containment. Indeed, large areas within the more sensitive closer ranges of 5km or less will have little or no view of the development eg. Ettrickshaws Farm, the Ale Water valley at Ashkirk and the Borthwick Water valley at Robertson.

Figure A12b shows the ZTV with principal receptors within 15km, especially the public roads and footpaths expected to experience effects. This shows that a section of the B711 Hawick to Ettrick Road would be affected from the crest north of Borthwickbrae down to the Ale Moor Reservoir and including Viewpoints 1 and 2. A

further section of this road will also experience visibility several kilometres west at Viewpoint 15, although the curvature of the road from that Viewpoint back to the Reservoir limits visibility to less than a 2km stretch. There is little or no visibility from the same road at, or in the vicinity of, Robertson.

There is less containment and greater visibility from a section of the Ashkirk to Robertson Road, from Shielswood at the northern end to Blawearie (Viewpoint 4) at the southern end before the road runs south over the crest of the land towards Robertson. This includes the Wm Ogilvie Cairn Viewpoint 6, albeit the Cairn has been currently dismantled. It also includes a section of core path from Shielswood to Viewpoint 6 on the road itself. Within the 5-10km range, there are areas of visibility on the A7 south of Ashkirk where both Langhope Rig and the proposed wind farm will be visible for a stretch before Groundstone Heights (Viewpoint 8), albeit this visibility is theoretical and impacted greatly by forestry. Similarly, a section of road from Synton Mains back to the A7 will provide visibility of all seven turbines – Viewpoint 17. At further distance, sections of the A698 around Denholm and the B6359 at Lilliesleaf will experience some visibility, albeit this will be up to 15km distant.

There are some shorter range areas of visibility from some Rights of Way including the route from Wester Ale Moor via Easter Ale Moor to Todrig. Views from routes such as the Borders Abbeys Way are more distant.

In comparison with the refused initial Barrel Law scheme, it is concluded that there are no reasons why lack of landscape containment would be a reason to oppose the current scheme. The revisions, whilst lifting blade tip heights, have conversely lowered base heights, removed one turbine, moved the siting north and reduced the spread of turbines from most viewpoints. The ZTV for the previous scheme led the Reporter to conclude that “...adverse landscape effects would be perceived within a relatively limited area (about 5 kilometres from the site), and that the effect on the upland landscape of the Scottish Borders as a whole would be minor”. Whilst he then went on to refuse the scheme as he felt “...landscape character would be seriously damaged”, this was for reasons of specific localised landscape and visual impacts from certain areas and viewpoints – not for reasons of wider lack of containment. His decision also reflected the wider cumulative impacts including Langhope Rig. These specific impacts and the effects of revisions to the scheme will be addressed in the next section of this Report.

It is concluded that, overall, the site is relatively well contained in the wider landscape and this is supported by the general findings of the Landscape Capacity Study. .

### Landscape Impact

The site does not have any special landscape designations nor does it include or lie within close proximity to any designated Wild Land Areas. The receiving landscape is defined as a large scale upland character type (BDR4 (ii) Southern Uplands with Scattered Forest – Dun Knowe Group) covering much of the south-western area of the Borders and generally considered to be more suitable to accommodate large structures such as wind turbines. The receiving landscape is therefore suitable in terms of scale. However, it is recognised that there are variations in scale within that overall landscape character area. There are also a number of smaller scale upland fringe and river valley landscapes located within 5km of the site, including the Chisholme, Whitehaugh, Upper Teviotdale/Borthwick Water and Ale Water Landscape Character Areas. It is considered that impacts on the smaller scale landscape character areas are limited to small portions of the extremities of these areas, as defined in Table A13 of the ES. The Council Landscape Architect also

believes that some of these areas will have no visibility at all, such as in the Ettrick Valley, Ale Water at Ashkirk and the Borthwick Water Valley at Robertson.

Of particular concern with the initial refused Barrel Law scheme were the impacts on variations of landscape scale within the overall landscape character type. This is particularly the case at the Alemoor Reservoir shoreline (Viewpoint 1) where the shoreline, road and tree cover introduce a finer grain of detail than is reflected in the overall landscape character assessment. Scottish Natural Heritage comment on this viewpoint in their response and acknowledge that there have been improvements in compaction of layout, setting the turbines further behind the landform. However, the larger blade diameter has negated the effects of some of the improvements meaning that SNH continue to feel there will be significant and adverse effects on landscape character and tranquillity at the reservoir.

On the initial scheme, the Reporter was of the same view as SNH. He identified that in terms of vertical scale, the turbines at Viewpoint 1 would appear more than half the apparent height of the landform when measured from reservoir level. He made a similar point with Viewpoint 2 (Wester Alemoor) and Viewpoint 6 (William Ogilvie Cairn) where he felt buildings and conifer plantations would be “...*dwarfed by the 125 metre turbines*”. This issues of vertical scale and dominance in relation to detailed local landscape character were also reasons that the Council rejected the initial scheme.

The revised scheme has claimed that the revisions to design, layout and siting have addressed these concerns to acceptable levels, whilst acknowledging that the base to tip turbine height has increased. The Council Landscape Architect considers that in the overall balance and, whilst he still has concerns over the impact on local landscape character from Viewpoint 6, there has been sufficient improvement to reduce landscape and visual effects from other viewpoints to the extent that he cannot continue to oppose the application.

Taking Viewpoint 1 as an example and allowing for the slightly changed Viewpoint position, the scheme has resulted in the following changes:

- The turbines are further away from view, the nearest now being 300m further away.
- The omission of one turbine.
- A reduction in turbine tip heights but with a greater reduction in tower and hub heights, the turbines being more below the landform than before and six rather than eight hubs being visible. The highest turbine being 15m lower than the previous highest tip.
- The linear spread of the turbines significantly reduced and kept away from the lower slopes of the landform.
- More uniform design with less clustering and overlapping.

The SNH concern is fully appreciated that any improvements have been partially offset by the increased blade diameter. It is also accepted that the vertical scale of the turbines remains large in relation to this particular local landscape. Nevertheless, in the overall assessment of all other visibility and landscape impacts, it is considered that the improvements made, especially to linear spread and tip height of certain turbines, determine that the scheme should not be rejected on the basis of residual impacts from Viewpoint 1. This reflects that the revised scheme also addresses the Council's initial concerns from this viewpoint that two turbines were particularly prominent compared to the remaining six within the original scheme.

This point of vertical scale above a local reservoir setting was recently and unsuccessfully defended by the Council at Fruid Reservoir in Tweeddale where 14 turbines of similar height (133.5m) were consented by the Scottish Ministers following a Public Local Inquiry and Reporter recommendation for approval. It is considered that the impacts at Alemoor would be similar, but of lesser scale, than those the Council identified at Fruid and that localised impacts on a more intimate part of a wider upland landscape character type need to be considered overall against all other impacts. Consequently, it is not considered that the impacts at Alemoor, whilst remaining significant as identified in the ES, are able to be sustained as a reason to refuse the revised scheme.

Viewpoint 2 from the B711 at Wester Alemoor remains of concern to SNH in relation to impacts on scale and landscape character, despite the revisions. They acknowledge the more compact and coherent view of turbines from this viewpoint but still maintain that the impacts are significant and adverse. The Reporter, on the initial scheme, agreed with the original SNH concerns that the turbines from this location would dominate the gently undulating topography and other key landscape features and scale indicators such as fields, woodland plantations and buildings/farm groups. The Council agreed on the original scheme, identifying four in the foreground and two overlapping/ stacking to the right of the viewpoint.

Viewpoint 2, which has moved position slightly, is in a more open location than Viewpoint 1 where the impacts are more dispersed and more able to be accommodated than perhaps at Viewpoint 1. The revisions to the scheme have addressed the previously expressed concerns by making the following changes:

- The turbines are further away from view, the nearest now being 220m further away.
- The omission of one turbine.
- A reduction in turbine tip heights but with a greater reduction in tower and hub heights, the foremost turbines now being further away and more below the landform than before and seven rather than eight hubs being visible.
- The linear spread of the turbines significantly reduced at the eastern end and kept away from the lower slopes of the landform.
- More uniform design with less clustering and overlapping at the eastern end.

Again, in the overall assessment of all other visibility and landscape impacts, it is considered that the improvements made, especially to linear spread and tip height of foreground turbines, determine that the scheme should not be rejected on the basis of residual impacts from Viewpoint 2. This reflects that the revised scheme also addresses the Council's initial concerns from this viewpoint, that four foreground turbines were particularly prominent compared to the remaining four within the original scheme and that there were stacking issues with the easternmost turbines. It is accepted that some blade tips of Langhope Rig are visible from this viewpoint but the cumulative impact on landscape character is not considered to be sufficiently significant to justify refusal.

Viewpoint 6 from the William Ogilvie Cairn looks towards a more localised and sensitive part of the Ale Water valley and there was significant concern expressed over the landscape and visual impacts resulting from the original scheme, from the Council, Landscape Architect, SNH and Reporter. The Council had felt that, in combination with Langhope Rig, the dominance and adverse impacts on this



attractive landscape could have been sufficient in themselves, to justify refusal of the scheme. Four turbines were initially identified as causing particular problems.

The literary significance of the viewpoint was, however, given less weight by the Reporter who felt that it was not sufficiently signposted to warrant any ranking as a major tourist attraction. It is, of course, also presently the case that the cairn has been dismantled and there is no on-site evidence of the association of the viewpoint with William Ogilvie. Nevertheless, the Reporter agreed with SNH and the Council on the initial scheme, that Viewpoint 6 was an important viewpoint in terms of landscape quality with an impressive view and that the view “...*would be severely affected by the intrusion of large out-of-scale turbines*”.

The Council Landscape Architect remains of the opinion that the impacts from this viewpoint are dominant and make the landform less dramatic and remote, resulting in significant adverse effects. He also feels the impacts were on a specific focal feature of the cairn itself, given the location of the cairn to celebrate the landscape and view. However, he also recognises that from Viewpoint 6, the turbines have receded slightly due to a move north and that he cannot use this one impact as a reason to oppose the overall scheme, given the other improvements and the support in principle now offered by the Landscape Capacity Study.

Scottish Natural Heritage have also reviewed the changes to the scheme from this viewpoint, acknowledging that the turbines are slightly over the ridge than before, reduced in scale and of a better design with more compact and regular spacing. However, the larger blade diameter still causes them significant concerns and they remain of the opinion that significant and adverse effects still occur. The applicant does have some criticism for SNH not acknowledging the removal of the Ogilvie Cairn and an alleged lack of fieldwork at other viewpoints. Many of the objections from third parties to the development concentrate on this particular viewpoint and the impacts that would still occur as a result of this revised scheme.

In more detail, the scheme has resulted in the following changes to Viewpoint 6:

- The turbines are further away from view, the nearest now being 220m further away.
- The omission of one turbine.
- A reduction in turbine tip heights but with a greater reduction in tower and hub heights, the turbines being more below the landform than before although all seven hubs visible and partly offset by increased blade diameters
- The linear spread of the turbines improved to the south-west on the lower valley slopes but slightly offset by an increase in spread over the hill to the north-east
- More uniform and compact design with less clustering and overlapping.

In terms of overall impact on the landscape from Viewpoint 6, the ES still acknowledges that the revised scheme will have significant adverse effects (albeit the removal of the Cairn has reduced the sensitivity to “medium” according to the applicant’s Supporting Statement). The scheme is more towards the Ale Valley landscape than Langhope Rig and much more in the focus of view. Whilst the original Committee Report identified this viewpoint and stated that “...*the wind farm would potentially be unacceptable on its own*” from that viewpoint, the revisions to the scheme and the general support from the “Landscape Capacity Study” have led the Council Landscape Architect to consider that there would be no justification to refuse

purely because of the impacts from this viewpoint and receptor. This view is accepted.

Impacts from other viewpoints are generally discussed in the remaining sections of this report, as they affect principal receptors such as roads, public paths, cultural heritage assets and residential properties. Some of the viewpoints mentioned by objectors are from hill summits and iconic scenic viewpoints such as the Eildon Hills, Ruberslaw and Carter Bar. However, none of these were identified as instrumental in the reason to dismiss the previous scheme by the Reporter, in that he considered that the scheme was generally well contained within the wider landscape. The Council had previously identified impacts from two of these viewpoints but, given the changes that have now occurred to the scheme, the conclusions of the ES are accepted that none of these impacts are significant.

This is also the case with other hilltop viewpoints such as Viewpoint 7 at Witchie Knowe where the impacts merge with Langhope Rig, albeit there is one less turbine, some hub heights are lower and a couple of hubs are now below the skyline. The improvements are offset slightly by the increased blade diameters and an increase in clustering. Overall, however, and despite the revised scheme moving closer to this viewpoint, there are sufficient improvements from this viewpoint to result in it not being material in determination of the scheme.

The same with Viewpoint 9 at Broomy Law and Viewpoint 19 at Scott's View. Despite some increase in overlapping, the lower hub heights and one fewer turbines combined with the greater impacts of Langhope Rig, contribute to impacts that are not significantly adverse and did not previously result in the scheme being refused at appeal.

It is noted that there are criticisms there should be a proposed photomontage from Carter Bar rather than just existing photomontages and wirelines. Given the lengthy distance and the small scale of the turbines within such a photomontage, the submitted wireline is considered to be a sufficiently clear depiction to portray the likely impacts – which will not be significant.

There are similarly non-significant impacts on Gardens and Designed Landscapes. The ES identifies 21 such designations within 40km but only 9 with any visibility at all. Of these, the closest is Bowhill at 8.5km from the nearest turbine. All 9 would have very limited or intermittent visibility and, apart from Bowhill, all lie outwith 15km distance. The ES conclusions are accepted that there would not be significant adverse impact on any of the designated Gardens and Designed Landscapes.

In summary, the receiving landscape is characterised as large scale, upland and is acceptable in scale and provides a degree of containment, especially to the wider landscape. There are no landscape designations within, or significantly affected by, the scheme. The landscape impacts that had been identified as sufficiently adverse to justify refusal of the previous scheme, have now mostly all been reduced to acceptable levels by a combination of reduction in turbine numbers, ground levels, hub heights, more compact design and greater distance from sensitive viewpoints. The Ironside Farrar Landscape Capacity Study clearly offers some support for the development of very large turbines in this specific part of the Dun Knowe Group. Taking these factors into account together with the lack of formal objections from SNH and the Council's Landscape Architect, it is considered that there are insufficient reasons to sustain a recommendation for refusal on grounds of general landscape impact.

## Visual Impacts – Roads and Paths

The submitted ZTV plans confirm the extent of theoretical visibility of the wind farm and viewpoints have been selected based on this to illustrate the visual impact of the development from various high sensitivity receptors, including public roads and paths. The ES has considered a number of such receptors, with significant effects identified in locations close to the site. The viewpoints mentioned in the previous section were considered to have been influential in the consideration of landscape impacts as a result of the previous scheme, leading to its rejection. Those viewpoints remain important and have identified significant impacts, all three being locations alongside either the B711 or the minor road from Ashkirk to Robertson. Annex A of the ES fully considers the impacts from sensitive receptors, para 676 onwards considering the visibility from roads and paths.

The A7 is a major tourist route through the Borders. The ZTV demonstrates that the wind farm would potentially be visible only from sections where the A7 becomes more elevated, especially along a stretch south of Ashkirk and briefly south of Teviothead. The initial section of visibility from the A7 is depicted through Viewpoint 8, the ES concluding that the angle of view is oblique and the distance, afforestation and proportion of turbines on view all contribute to an impact concluded as not significant. The Council's Landscape Architect accepts this assessment.

The view from the A7 at Viewpoint 8 was not an influential factor in refusal of the previous scheme. The Reporter felt that, at 7.9km distance and with the added impact of Langhope Rig, the development would be absorbed by the landscape and effects would be minor. The revised scheme makes little difference in impact due to the larger blade diameters offsetting any benefits of hub reduction. However, the design of the scheme is much better from this viewpoint with less gap and clustering and the removal of one turbine. The lateral spread is little different having shrunk to the south but enlarged to the north, although the screening by trees is perhaps more effective now. As impact from the A7 did not contribute to the previous reason for refusal, there is no reason to oppose the revised scheme which makes improvements when viewed from this location. The theoretical visibility from the A7 elsewhere within a 20km radius is almost non-existent and demonstrates significant topographical containment along this route.

The B711 public road connects the A7 south of Hawick with the B709 in the Ettrick Valley via Robertson and West Buccleuch. Examination of the ZTV demonstrates that visibility of the wind farm is fleeting or non-existent along this route from the A7 until the ridge of Firestone Edge is reached approximately 3km from the nearest turbines. Visibility of all seven towers and hubs is then possible along this section of road as it travels north and westwards to Alemoor Reservoir via Viewpoints 2 and 1. Then visibility is concealed until a stretch of the road further west, about 5-7km from the wind farm, centred on Viewpoint 15.

Viewpoints 1 and 2 from the road have been considered in the previous section on landscape impact. Viewpoint 15 has been little improved as a result of the revised scheme. Whilst there is obviously one less turbine and the nearest turbine is now 500m further away, the turbines are above the skyline when approaching from the west and more in the focus of view. The ES identifies that impacts will still be significant and for approximately a 2km stretch of the B711 at this point. However, the design of the layout has been improved, Langhope Rig remains visible and distinct and the overall distance is 6.61km to the nearest turbine at this point. Given these facts and that visibility disappears from Viewpoint 15 for 3km until nearer Alemoor Loch, it is not considered that this impact is sufficiently adverse in itself to

oppose the revised scheme. Viewpoint 15 was also not influential in the previous decision by the Council and Reporter. Indeed, the Council's previous comments on overlapping of turbines has been addressed from this viewpoint in the revised design.

The ZTV also demonstrates proportionately long areas of visibility of the wind turbines along the minor road from Ashkirk to Robertson. The main area of visibility of all seven turbines is a 3km stretch from the ridge at Blaewearie (Viewpoint 4) to just north of the William Ogilvie Cairn site (Viewpoint 6). Beyond that, there is varying visibility of fewer turbines at Burnfoot and Shielswood for approximately 1.5km. South of the Blaewearie ridge to the junction with the B711, visibility is fleeting and negligible.

The landscape impacts from Viewpoint 6 have been discussed earlier. The only other submitted viewpoint on this road is Viewpoint 4 at Blaewearie. At this point, the nearest turbine within the revised design is 2.59km away which represents 290m movement further away from the refused scheme. Whilst one turbine has been removed from the scheme and there has been some lateral spread improvement on lower landform to the south, the height reductions are not as noticeable at this viewpoint compared to others, mainly as a result of the blade diameter increases. The amount of clustering and overlapping has possibly been increased in the revised scheme albeit there was already overlapping in the centre of the previous scheme – identified by the Council in the Committee Report.

This viewpoint, as with Viewpoint 6, demonstrates that from the minor road and at closer proximity than other roads and paths in the area, the revisions have less effect and impacts will remain significant and adverse, albeit the revised scheme does reduce and improve the impacts. The Reporter felt on the previous scheme that the scenic quality of the road would be significantly diminished and the Council's Landscape Architect continues to identify the impacts from Viewpoint 6 in particular. Nevertheless, he remains of the opinion that impacts from a single receptor (the William Ogilvie Cairn) on the minor road could not in isolation, and in the overall planning balance, justify opposition to the scheme which has otherwise demonstrated improvements in landscape impact across nearly all viewpoints, albeit more limited between Viewpoints 4 and 6 on the minor road. Within this consideration, it also needs to be accepted that the road is very lightly trafficked, albeit with likely increased traffic in the summer months to reflect the scenic nature of the route and the previous draw of the William Ogilvie Cairn.

In terms of impacts from other roads, the Reporter on the previous scheme felt that any impacts beyond the 7km distance would not be sufficiently significant to justify opposition to the scheme. Brief areas of visibility may be possible from the A699, A698, A68, A6088, B6358, B6399 and B7009 but at distances at or beyond that previously considered not to be significant by the Reporter. Viewpoint 17 from the minor road at Synton lies 7.3km from the nearest turbine, an increase of 200m further distance separation compared to the previous scheme. Improvements from this viewpoint result from the omission of one turbine albeit any height reductions have been offset by the larger blades. The lateral spread improvements to the south have also been offset by movement to the north, albeit design of the scheme is better from this viewpoint with less overlapping and the loss of the outlier to the left of the view. Given the modest improvements and the lack of significance attached to this viewpoint within the previous decision, there is no reason to oppose the revised design in terms of impacts on public roads beyond the 7km distance, including the minor road to Synton. The applicant also wishes to correct the SNH statement that this viewpoint is from Ashkirk village.

There are a number of core paths, public rights of way, promoted paths and permissive paths within the 20km range. These are linked to several significant hills within the area. The Reporter, on the previous scheme, assessed but made little comment on significance of impacts from pedestrian routes and hill summits. He identified Witchie Knowe (Viewpoint 7) and Broomy Law (Viewpoint 9) but felt that at the 9-14km distances and with the presence of Langhope Rig, impacts would not be significant.

In terms of the main footpath routes, the ES identifies The Borders Abbeys Way which is a strategic long distance footpath and links Hawick, Selkirk and Jedburgh. The nearest stretch to the wind farm is the 19km long Hawick to Selkirk route. The ES concludes impacts will not be significant at distances of approximately 5.8km, the longest length of visibility being 400m at Drinkstone Hill (an iconic viewpoint in the SPG on Wind Energy) and demonstrated by Viewpoint 14. The Council Landscape Architect does not think long distance footpaths such as the Borders Abbeys Way will be significantly affected and the Council had previously accepted the impacts from this viewpoint. Certainly, the revised scheme is significantly improved from this viewpoint with no hubs now visible, less blade overtopping, reduced lateral spread and 350m further distance.

The ES also identifies The Cross Borders Drove Road which passes through the Study area and which largely shares similar visibility and distance impacts with the Borders Abbeys Way. The longest stretch of visibility will be 1.25km on Drinkstone Hill but is considered to have the same level of impact and significance. The Romans and Reivers Route is also identified with a long 5.5km section of visibility from Robertson to Broadlee Loch, generally 6-7km distant and where the impacts are considered to be not significant. Some shorter areas of medium significance are identified and Viewpoint 16 demonstrates this, south of Robertson. The revised scheme moves the turbines 270m further north but there is little other difference from this viewpoint as the larger blade diameter offsets the benefits of the lower hub heights. The Council were not originally concerned at impacts from this viewpoint.

Impacts on the Borders Loop Cycle Route are also considered but the ES concludes that, apart from the section that shares the B711 south of the site (and which is assessed elsewhere in this report), impacts will be beyond 15km generally and will have negligible impact.

Paragraph 888 of Annex A of the ES then considers all other core paths, Rights of Way, promoted and Permissive Paths in the 15km Study Area, demonstrated on Figure A6b. A number of the viewpoints would represent views expected by walkers, including 2, 3, 5 – 7, 9, 10, 14 and 16 within 5km of the proposed wind farm. It is acknowledged that some of these routes will have significant and close-up uninterrupted views of the wind farm, including Right of Way BE38 from Wester Ale Moor to Todrig, via Easter Ale Moor and Whitslaid. BE132 also passes through part of the site and there are three other sections of Rights of Way within 2km. Viewpoint 5 was previously of limited value and has now moved north on the Right of Way at Tod Rig, demonstrating that the revised scheme would be of greater impact than before due to it moving nearer the viewpoint. However, Langhope Rig remains the dominant scheme from this location on the Right of Way.

The ES concludes that within uninterrupted areas of visibility within 5km, the effects will be significant from a number of these paths, albeit there are also sections of path within that radius where impacts will be more limited. The Reporter on the initial scheme did not specifically refer to impacts from rights of way and paths, albeit he did reflect on impacts from some viewpoints that did share paths

Viewpoint 3, for example, whilst of significance in terms of residential amenity assessment (below), is also taken from Right of Way BE38. From this viewpoint, the ES concludes that impacts will be significant with a high magnitude of change. This viewpoint was influential in the previous decision, especially in relation to residential amenity – and will be discussed in more detail below.

In summary, significant visual impacts remain, especially from stretches of the B711 and minor road to Ashkirk, generally closer to the site, where there are clear uninterrupted views of the proposed development. From certain receptors such as Alemoor Loch and the William Ogilvie Cairn site the development would still appear dominant on the skyline. However, even those viewpoints demonstrate improvements within the revised scheme in height, design and lateral spread. Taking into account the improvements to significant impacts from other viewpoints on public roads and paths and the impacts caused by Langhope Rig, it is not considered that the visual effects from these sensitive receptors remain so significant that the revised application becomes unacceptable, especially when considered in the overall planning balance and against current Policies and Guidance, including the Landscape Capacity Study.

#### Visual Impacts – Residential Amenity

Scottish Planning Policy advocates the identification in Local Development Plans of an area not exceeding 2km around settlements (that have settlement boundaries within Local Development Plans) as a community separation for consideration of visual impacts. This separation distance was not specifically referred to individual properties but it is regularly used as a threshold by Reporters in decisions and it is generally recognised that most overbearing and unacceptable impacts on residential amenity would tend to occur within that distance rather than between 2 and 5km distance. The Council's "Renewable Energy" SG also clarifies that individual properties within 2km should be considered.

Visual impacts on residential amenity, whether from settlements or individual properties, tend to use the "Lavender Test". The "Test" is an assessment approach that has been taken in a number of appeal cases to assess impacts, even though it is not universally applied nor is there any Scottish Government guidance recommending its usage. The "Lavender Test" not only refers to the impact on houses but also their gardens. It sets quite a high threshold of whether a wind farm would be so overbearing and dominant on a property that it would make it an unattractive place to live. Much would contribute to that assessment including proximity, elevation, main outlook from windows, interruption by screening or buildings, location of garden ground, approach roads and tracks etc. These matters are considered and advised in the "Renewable Energy" SG.

Whilst all matters must be considered in the overall assessment, the greatest weight simply has to be given to direct and unavoidable impacts from inside dwellinghouses and, in particular, main habitable room windows. There is also evidence that decisions are taken on the number and proportion of properties within an area that may experience such impacts. The fewer the properties impacted, the less weight that would hold in the overall planning balance. This argument was unsuccessfully defended by the Council at the Whitelaw Brae PLI in Tweeddale where the Reporter stated that *"...assessment of this issue has had regard to both the number of properties affected and ... the severity of the predicted effects"*.

There is no question that the previous scheme at Barrel Law was refused by the Council then dismissed by the Reporter, for reasons of residential amenity impacts. The Reporter identified at least three properties that would experience significant adverse effects – Easter Ale Moor, Wester Ale Moor and Blaewearie. Whilst other properties were also mentioned (such as Hawksnest which was of more concern to the Council), it is clear that the impacts on these three properties led to his conclusion that the Development Plan Policy was not able to be complied with in respect of residential amenity. It is, therefore, important to consider how the revised scheme has addressed these impacts whilst also taking into account the influence of the limited number of properties affected when set against the remainder of the improvements in the scheme and the general Policy and Guidance background.

Criticisms have been made by objectors of the quality and level of information provided by the applicant to demonstrate the predicted residential amenity effects and, in particular, the chosen viewpoint position at Easter Ale Moor and lack of photomontages. However, it is considered that the information provided on the revised scheme is improved on the quality and detail of the information provided for the refused scheme and it is also noted that there was no obvious criticism from either the Reporter or the Council on the quality of the previous Residential Amenity Assessment. Each affected property has a map, aerial view, larger scale wireline and written dialogue with predicted effects. Additional information was also submitted, upon request, demonstrating “before and after” wirelines from the most affected properties to enable a better assessment of how the revised scheme has addressed the previously identified significant adverse impacts.

Appendix A2 of the ES contains the Residential Visual Amenity Assessment which has been considered alongside the more recently submitted comparative wirelines. Concerns from the objectors have also been considered including their comments on the material submitted and, where relevant, their own visual material and other appeal decisions.

In terms of settlement impact, Roberton is the nearest settlement with a boundary in the Local Development Plan, lying within the 5km radius. However, the ZTV shows there to be no visibility of the wind farm from the settlement due to the screening effect of the ridge formed by Hangingshaw Hill. Hawick lies within the 5-10km range and similarly has no visibility with the exception of small areas of elevated ground at Crumhaugh Hill and Orchard Terrace. Viewpoint 10 indicates impacts from outwith the town on a Right of Way at Crumhaugh Hill. Although this viewpoint has changed slightly from the previous scheme, there are still improvements noticeable from this viewpoint due to the move further away from the viewpoint, lower hubs, one fewer turbines etc. Whilst the overlapping has perhaps increased, the distance from Hawick and the very limited areas of visibility determine that impacts from the settlement are not significantly adverse and do not justify rejection of the scheme.

The same would apply to the other identified settlements within the 5-10km range – Ashkirk and Ettrickbridge. Ashkirk has some theoretical visibility of some of the turbines but not at any scale or distance that impacts would be considered dominant or overbearing. Ettrickbridge would have no visibility due to the valley location of the settlement and intervening ridgelines.

Figure 1 of Appendix A2 indicates 33 individual properties with theoretical visibility of the wind farm within a 5km radius. Assessments are carried out for all of these properties with the exception of uninhabitable ones. Of particular relevance, however are the three inhabited properties within the 2km radius of the wind farm (Easter Ale Moor, Whitslade and Hawksnest) and two further properties just outside the 2km

line with predicted significant visibility at Wester Ale Moor and Blaewearie. Other properties at these distances are also affected including Todrig, Langhope and Borthwickshiels and, whilst these were considered collectively by the Reporter as contributing to adverse residential amenity impact, they would not in themselves have been considered sufficiently overbearing to have justified rejection of the scheme in their own right.

It is therefore more relevant to examine those properties that were of greatest concern to the Council and Reporter and how the revised scheme has addressed the identified impacts. These properties are Easter Ale Moor, Wester Ale Moor, Hawksnest, Whitslade and Blaewearie. Comparative wirelines have been provided for all these properties and some properties also coincide with main viewpoints such as Viewpoints 2-4

The greatest impact on residential amenity of the previous scheme was identified at Easter Ale Moor and this continues to be the case. The Reporter had assessed that from 1.1km proximity, all eight previous turbines were visible on the ridgeline. Despite vegetation and the orientation of main rooms facing away from the wind farm, the turbines would be *“a dominant and oppressive presence that would severely limit the enjoyment of the domestic curtilage and substantially impact on residential amenity”*. The Council also previously considered the impact to be dominant and that *“Occupiers of the house and land would live and work hand in glove with the development”*.

The owner and tenants of the house and farm continue to strongly object to the revised scheme and have raised many points including the greater impact of the wind farm when moving around the environs of the steading at different positions – a fact Members saw for themselves on the Committee site visit. They also raise the importance of considering impacts on living and working on a hill farm, quoting an appeal decision at Minnygap near Moffat where the sensitivity of hill farm workers to impact was taken into account by the Reporter.

Appendix A2 and the Comparative Wirelines show the changes to the scheme with regard to impacts on Easter Ale Moor. They are all improvements and they are proportionately significant in that there is one less turbine and the turbines have moved further away from 1.1 to 1.25km. Perceived height reductions are greater here despite the blade diameter increases and only four hubs are now visible with much less vertical tower presence. Four towers were particularly noticeable in the previous scheme. The lateral spread has been greatly reduced from the south and there remains no particular design problem from this location in terms of cluster and overlapping. The ES continues to identify the impacts as significant and, despite the fact that the changes are more noticeable from Viewpoint 3 and the farmhouse than from other viewpoints, the impacts remain significant and unacceptably adverse when applying the “Lavender Test”.

However, as pointed out by the Landscape Architect, the impacts on single receptors need to be considered in the overall balance, a fact demonstrated in appeal decision making. Whilst a few properties may experience impacts considered to be unacceptable in themselves, the low numbers of those impacted is a material consideration in terms of weight attached to residential amenity impacts in the overall planning balance. Whilst it is accepted that the impacts at Easter Ale Moor remain the most significant of all of the affected properties, the revisions to the scheme are acknowledged and there is no doubt that visibility from the house itself is negligible. Some weight does have to be attached to impacts around the farm given that it is a working hill farm but, although this was recognised by the Reporter in the Minnygap



decision, that scheme was still approved, indicating such impacts were outweighed in the overall balance.

Wester Ale Moor is further away from the wind farm at 2.258km and is located on the B711, coinciding with Viewpoint 2. The Reporter accepted that the view towards the windfarm would be partially obscured by buildings but that eight turbines and two overlapping from the property would be dominant and would *“have a significant impact on visual amenity”*. The improvements from this viewpoint have previously been considered in this report, namely:

- The turbines are further away from view, the nearest now being 220m further away.
- The omission of one turbine.
- A reduction in turbine tip heights but with a greater reduction in tower and hub heights, the foremost turbines now being further away and more below the landform than before and seven rather than eight hubs being visible.
- The linear spread of the turbines significantly reduced at the eastern end and kept away from the lower slopes of the landform.
- More uniform design with less clustering and overlapping at the eastern end.

Taking these improvements into account and the undoubted screening afforded by the large outbuilding between the house windows, its garden and the revised position of the windfarm, it is not considered that the resulting visual impact remains as domineering and overbearing that it would make Wester Ale Moor an unattractive property to live in.

Blaewearie lies close to Viewpoint 4 on the minor road to Ashkirk and will be 2.658km from the revised position of the windfarm. The nearest turbine has generally moved 350m further away from this property. The Reporter had previously felt the scheme would be in the main view of the property although there was screening by trees and other vegetation in the garden, plus their own domestic wind turbine. He still felt there would be a significant adverse effect on their residential amenity.

From Viewpoint 4 and assessing the comparative wirelines, the movement further away and the loss of a turbine has combined with the lower hub heights to reduce the impacts, albeit again, the larger blade diameter has partially negated the height reductions. There is no doubt that lateral spread is curtailed to the left of the view, albeit at the expense of some increased overlapping. The influence of Langhope Rig is also a consideration. Taking these reductions and improvements into account together with the screening afforded by the garden trees and vegetation, it is not considered that the resulting visual impact remains as domineering and overbearing that it would make Blaewearie an unattractive property to live in. It is also considered that there are expansive views in different directions away from this property that contribute to visual amenity and would not be affected by the proposed wind farm.

Hawksnest was also identified by the Council as experiencing significant adverse impacts from the initial scheme, lying east of the wind farm originally at a distance of just over 1km. The Reporter was less inclined to consider the impacts at Hawksnest as anything more than moderate or minor. However, comparing the wirelines of this viewpoint between the previous and proposed schemes shows a dramatic change in visibility of the turbines to an extent that can no longer be considered to be overbearing or dominant. Only two hubs and four blade sections are now visible at 350m further away, the vertical extent decreasing significantly. Given this and the fact that the main aspect of the house is south towards the minor Ashkirk road, the

impacts on this property can now be considered acceptable. The same with Whitslade which sits alongside Hawksnest but is closer to the hill and much greater screening results in only one section of blade tip being visible.

The Reporter did include other properties in the initial decision to refuse for reasons of adverse residential impacts, albeit most were to the south and the scheme has now moved further away to the north. Individually they were less problematic but cumulatively, together with the three properties where significant effects were expected, the overall effects were unacceptable. As the scheme has moved north, these properties are no longer considered to experience effects that could be considered to be overly dominant or overbearing.

Conversely, the scheme is nearer several properties to the north such as houses at Todrig and Langhope as well as at Wester Essenside. The Residential Amenity Assessments show little significant impact and few turbines being visible because of the nature of the valleys and the topography. The comparative wireline for Wester Essenside does show turbines now becoming visible around the shoulder of the hill but still at a distance and of a scale that is not considered to be dominant or overbearing.

The ES concludes that the turbines would not be present in such numbers, size and proximity that they represent an unpleasant, overwhelming or oppressive presence in the main views from the nearest settlements. Given the sporadic and low population within the general area, the ES then rightly concentrates on individual properties and farms surrounding the wind farm within 5km. Of those, it identifies significant impacts still at four main properties whilst demonstrating the level of improvements from the revised design that have undoubtedly occurred. In all but one case (Easter Ale Moor), it is considered that the dominance and scale of the significant effects have been reduced to levels that are within the tolerances of the “Lavender Test” at these properties, especially comparing the residential amenity impacts to those considered acceptable within recent appeal decisions at Whitelaw Brae and Pines Burn.

The impacts at Easter Ale Moor remain significant and dominant, especially to the environs of the farm and steading, including access tracks. The changes to the scheme improve the impacts, but not to acceptable levels. Nevertheless, in line with previous Council and appeal decisions on wind farms and residential amenity, impacts on one property carry limited weight within the overall planning assessment of other landscape and visual impacts on all receptors. The revised scheme has made sufficient improvements in these respects that the application cannot be justifiably rejected for impacts on one property alone.

#### Cumulative Landscape and Visual Impacts

Policy ED9 requires all cumulative landscape and visual impacts to be considered and recognises that in some areas the cumulative impact of existing and consented development may limit the capacity for further development. The “Renewable Energy” SG contains advice on cumulative impact as does the Ironside Farrar “Landscape Capacity” Study. Both the Policy and the Guidance advise that there will be a presumption against development where cumulative impacts are expected to be significant and adverse.

SNH define cumulative impacts in their Guidance Note “Assessing the Cumulative Impact of Onshore Wind Energy Developments” (2012) as “*..the additional changes caused by a proposed development in conjunction with other similar developments*”. Where a particular receptor will be affected by more than one wind farm, there can

be a greater incremental effect either directly or in sequential progression. SNH also produced further guidance on cumulative impacts in “Spatial Planning for Onshore Wind Turbine – natural heritage considerations”.

The initial scheme at Barrel Law was refused by the Council partly for cumulative impact reasons, stating:

*“(iv) the intensification of adverse landscape and visual impacts due to cumulative visibility with the approved Langhope Rig wind farm, particularly from the area around the William Ogilvie Cairn on the road to Robertson (but also from a range of other areas/points of visibility)”.*

In dismissing the subsequent appeal, the Reporter agreed with this and the views of SNH in particular. Whilst initially separated by 2km and whilst partly according with SNH Guidance on designing multiple wind farms in the landscape, the Reporter felt that impacts from closer viewpoints such as at Wester Ale Moor (Viewpoint 2) and the William Ogilvie Cairn (Viewpoint 6) would result in intensification of wind farm development on locally visible skylines as a result of the proposal and Langhope Rig. He concluded that this would increase “...*the perception of the area as one with multiple wind farm developments*”.

In responding to the revised application, SNH maintain their concerns over cumulative impact. They remain content that from middle and further distance viewpoints, the proposals are related acceptably to Langhope Rig. However, at closer proximity, their concerns increase. They refer to Viewpoints 2 and 6, the strong cumulative influence exerted by the more prominent Barrel Law scheme creating significant adverse effects on local landscape character and visual amenity. They also highlight Viewpoint 13 and especially Viewpoint 17 from east of Ashkirk, the latter being of more dominant scale compared to Langhope Rig, despite the revisions making the scheme more compact.

The Council Landscape Architect is of a similar opinion with regard to more distant views of both windfarms. On closer impacts such as from Viewpoint 6, there will be significant coincidental cumulative impact. He considers that sequential impacts are more difficult to quantify although he believes that the site is relatively isolated and the addition of Barrel Law to Langhope Rig will not increase the extent of sequential impact to the extent that the original development of Langhope Rig would on the previously undeveloped landscape. He concludes that the presence of Langhope Rig sets a precedent in the Dun Knowe Landscape Character Area although objectors counter that Langhope Rig was already approved and fully considered by the Reporter in dismissing the previous scheme. Perhaps the point made by the Landscape Architect is one of certainty in that a completed windfarm has an established impact on an area compared to one that is approved and not yet developed where there will always remain that level of uncertainty over its implementation. The applicant also comments in Appendix 1 of the Supporting Statement that “*A constructed wind farm will inevitably provide a more realistic basis for cumulative assessment than one that is depicted only in visualisations...*”.

The Ironside Farrar Study, both 2013 and 2016 versions, refer to Langhope Rig in their assessment of landscape capacity for further development. The 2013 Study made it clear that at the time it was prepared and considered, Langhope Rig existed and Barrel Law 1 was proposed. It stated that the area “...*could form part of a new cluster of turbine development as long as the spaces surrounding this new cluster are maintained free of turbine developments*”. The 2016 version also identified that, whilst significant separation and siting issues between the two wind farms be

addressed, there remained capacity within the Dun Knowe Group for 5-10 further turbines 120m plus.

The issue, therefore, is whether the revisions to the scheme, combined with changed and enhanced guidance on wind farm developments in relation to landscape capacity, results in any reduction in the degree of adverse cumulative impact to the extent that refusal is no longer justified for this reason within the overall planning balance

The ES with the revised application analyses impacts expected within a 60km radius of any wind farms that either exist, have been approved or are within the application process. Following SNH advice, wind farms within the inner 40km radius have been assessed in more detail and a series of 22 wind farms identified with associated cumulative ZTVs – Figures A15a – A15w and wirelines A16-A34. Scoping sites have not been included such as Cliffhope, Fawside or the Wauchope/Newcastleton Forest sites, some of these post-dating the submission of the revised application. The nearest of these schemes would have been Fawside approximately 12km south of the site but, given the distance and the early Scoping stage of the project, the impacts of this scheme combined with the revised proposal cannot be given much weight in the overall decision.

The cumulative impact ZTVs demonstrate that the most significant impacts occur at closer proximity with Langhope Rig, as identified in the previous decision. Long Park and Pines Burn do cause some cumulative impacts but only at middle range for most receptors. The Reporter, in his decision on Pines Burn, felt that the 15km separating distance meant there would be *“little cumulative effect”*. Figure A15q does show the theoretical visibility of both Langhope Rig and the proposed wind farm to be frequent across the area where visibility exists – there would be few areas where just Barrel Law would be viewed on its own.

However, there were certain viewpoints, in particular, that were of concern to the Council, Reporter and SNH, as follows:

#### Viewpoint 2

As previously noted, the following improvements have occurred at this viewpoint:

- The turbines are further away from view, the nearest now being 220m more distant.
- The omission of one turbine.
- A reduction in turbine tip heights but with a greater reduction in tower and hub heights, the foremost turbines now being further away and more below the landform than before and seven rather than eight hubs being visible.
- The linear spread of the turbines significantly reduced at the eastern end and kept away from the lower slopes of the landform.
- More uniform design with less clustering and overlapping at the eastern end.

The previous criticism of the cumulative impact from this viewpoint was that Barrel Law would increase the intensity and extent of wind farm development on a locally visible skyline. Although the Council had not identified a problem at this location with cumulative impact, the Reporter and SNH had. However, given the movement of the scheme further towards Langhope Rig and the reductions in scale, number and spread, it is considered that the new layout relates better to the blade tips of Langhope Rig to the north and behind the proposed turbines. Of particular benefit is

the reduction in height and linear spread to the right of view, creating a more compact view of what could be perceived as one wind farm from this location. The Council Landscape Architect considers the interaction between the two wind farms to be limited from this viewpoint.

#### Viewpoint 6

As previously noted, the following improvements have occurred at this viewpoint:

- The turbines are further away from view, the nearest now being 220m further away.
- The omission of one turbine.
- A reduction in turbine tip heights but with a greater reduction in tower and hub heights, the turbines being more below the landform than before although all seven hubs visible and partly offset by increased blade diameters
- The linear spread of the turbines improved to the south-west on the lower valley slopes but slightly offset by an increase in spread over the hill to the north-east
- More uniform and compact design with less clustering and overlapping.

The previous criticism of the cumulative impact from this viewpoint was the same as for Viewpoint 2 – an increase in the intensity and extent of wind farm development on a locally visible skyline. The Council had also identified the cumulative issue here with the windfarm-space-windfarm rhythm introducing new dominant elements to the view. From this viewpoint, there would never be an impression that the two wind turbine groupings are part of one wind farm. Yet, despite moving to the right of view and over the brow of the hill to a greater extent, sufficient and significant separation still exists between the two wind farms – a requirement acknowledged in the “Landscape Capacity Study”. Given the linear spread and hub/tip height reductions from this viewpoint, the cumulative impacts are improved and reduced. The Council Landscape Architect considers that, although both sites are fully visible, the direction of view is different and any coincident cumulative impacts are not sufficient to cause concern.

#### Viewpoint 13

The following improvements have occurred at this viewpoint:

- The turbines are 160m further away from view
- The omission of one turbine
- A more noticeable reduction in turbine and hub heights although offset partially by blade increases
- Linear spread improved to the left of view with reduction in turbines straggling down landform but partly offset by increase in turbines to the right
- Improved design and much reduced overlapping

The previous criticism of the cumulative impact from this viewpoint was raised by SNH and the Council, the original Committee Report stating that “*..both developments would appear as striking yet separate components of the view from the hilltop*”. Overall, the improvements identified above have less beneficial effect in terms of cumulative impact. There remains obvious separation between the two schemes but the revised scheme still occupies a separate hilltop when compared to Langhope Rig. However, the new scheme is still improved over the previous one due

to the more noticeable reduction in vertical scale when compared to the landscape and Langhope Rig turbines.

#### Viewpoint 17

As previously noted, the following improvements have occurred at this viewpoint:

- The turbines are now 200m further away.
- The omission of one turbine
- Slight height reductions but partially offset by the larger blades.
- The linear spread improvements to the south have been partly offset by movement to the north
- Design of the scheme is better with less overlapping and the loss of the outlier to the left of the view.

SNH are concerned about cumulative impact from this viewpoint (although the applicant has corrected their apparent misconception that the viewpoint is not from Ashkirk village but from a minor road east of the A7 away from the village). The Council also previously considered Barrel Law would be more prominent and less well related to the landscape than Langhope Rig, commenting on the differing levels and prominence of certain turbines. The Reporter felt there would be a rather cluttered horizon, although at 7.1km distance, did not consider the impacts significant. The aforementioned improvements still maintain sufficient separation between the two wind farms but helpfully reduce the extent of spread to the left of view, down the landform and furthest away from Langhope Rig. The relationship is more compact and the hub and blade tip reductions improve the previously identified discordant relationship of vertical scale.

Other viewpoints that were considered by the Council to previously exhibit unsatisfactory cumulative impacts were Viewpoints 4, 7, 11, 15, 18 and 19. However, neither the Reporter nor SNH felt that cumulative effects from these viewpoints were significantly adverse, especially given the distance from which the wind farms were viewed at these locations. A number of these are reiterated by objectors who feel that the scheme has not generally resolved the impacts from these viewpoints. However, given the views of the Reporter, SNH and the revisions and improvements to the new scheme, it cannot be considered that the cumulative impacts are sufficiently adverse that refusal of the scheme would be justified for these reasons alone.

Indeed, for those viewpoints where cumulative impacts with Langhope Rig were significantly adverse and identified as such by the Reporter or SNH, there have been improvements in vertical scale, height, design, location and lateral spread to an extent that allows the Council's Landscape Architect to accept the cumulative impacts in accordance with current Policies and SNH/SBC Guidance. In particular, the landscape capacity work carried out by Ironside Farrar on behalf of the Council identified capacity within this modest part of the Dun Knowe Group for a further 5-10 very large turbines whilst still maintaining significant separation from Langhope Rig. It is considered that the revised scheme does that whilst also making various scale and design improvements to largely overcome the previous cumulative impact criticisms, points also explored in Appendix 1 of the applicant's Supporting Statement. For these reasons, it is not considered that cumulative impact, in itself, is a reason to reject the revised application.

## Visual Impact – Construction

The associated works would include crane hardstandings, turbine bases, a substation/switchgear building, access tracks, temporary construction compounds, borrow pits and overhead/underground cabling. The ES evaluates the construction impacts on the predominant rough grassland as well as forestry, landscape character and viewpoints. Access tracks share Langhope Rig and forest tracks for significant stretches and, where new tracks and structures are required, no key landscape features will be removed and land take will be relatively small.

In terms of impacts from viewpoints, only those within 5km are likely to experience any effects. The ES considers that a short section of access track will be visible at 3km from Viewpoint 4 to one turbine as well as theoretical visibility of part of the control building. Viewpoint 13 may also have a view of a short section of access track and parts of both borrow pit search areas at 4.3km distance. The ES concludes that none of the construction activities will result in any significant effects and these conclusions are accepted.

It is the intention that the majority of the associated infrastructure is to be removed either at the end of the construction period or the operational life of the wind farm which is generally consented for 25 years. The ES basically states that the decommissioning will occur in the reverse methods set out in the Outline Construction Method Statement, to be preceded by the submission of a Decommissioning Method Statement for the approval of the Council. The control building would be removed but concrete bases, access tracks and cables would be left in situ, provided no environmental damage will result. To avoid unnecessary lasting environmental impacts, suitably worded conditions can agree the eventual removal (or any retention in situ) of ancillary infrastructure.

## Forestry

Impacts of a wind farm development on existing forestry are taken into account under the general considerations of landscape, ecological and visual impacts under Policy ED9 and the “Renewable Energy” SG. There are few impacts on forestry as a result of the scheme, the ES detailing that the only impacts are caused by accessing the site.

There was an initial objection by Forestry Commission Scotland on the basis of lack of information on road construction through the existing forest, compliance with the Control of Woodland Removal Policy and impacts on the Hyndhope Forest Plan. The applicant responded with further detail on the access track proposals. Whilst this initially follows the main Langhope Rig track and then an existing forestry track, there would then be a new section of access track leading to the open ground to the south-east of Hyndhope Forest.

Following reassessment of the precise route of this new section of access track, it has been identified that whilst there would be no felling of existing trees, a section of recently clear-felled area would be necessary to achieve the required 15m corridor width for the new access track, resulting in a total land take loss of 0.88HA which approximates to less than 2% of the overall afforested area. The applicant considers such a modest reduction to be an exception allowed under the Government Control of Woodland Removal Policy and, in any case, would comply with any replanting of broadleaves as part of the black grouse habitat replacement measures in the required Habitat Management Plan.

Forestry Commission Scotland has now withdrawn their initial objection and accept that the development complies with the Control of Woodland Removal Policy. The Council's Landscape Architect also has no objections to the impacts on woodland given that the objection has been lifted by Forestry Commission Scotland.

### Turbine Micro-siting

The ES states that a micro-siting allowance of 50m is appropriate for turbines and associated infrastructure, albeit there is also a request for the allowance to be extended up to 100m with the agreement of the Planning Authority. As with all wind farms, the principle of micro-siting is generally accepted and a standard 50m distance is nominally included in the Government recommended conditions. Whilst a degree of flexibility is suitable to allow for further investigation into ground conditions, all other potential impacts of micro-siting need to be considered, including visual and other environmental effects.

Given the concerns expressed in relation to cultural heritage and hydrology, there are particular reasons why micro-siting would have to be controlled, or even prevented, in relation to certain turbines. Similarly, the benefits and advantages that have arisen as a result of the revision to the initially refused scheme, in relation to landscape, design, visual and residential amenity effects, could be reduced with any micro-siting and these effects would all have to be properly assessed within an appropriate condition.

There is not considered to be any reasonable justification for a micro-siting allowance of 100m and, thus, the suggested condition would limit the distance to 50m, subject to no micro-siting nearer residential properties not financially involved with the scheme, to Scheduled Monuments, to areas of deep peat or to watercourses, private water supplies or Groundwater Dependent Terrestrial Ecosystem (GWDTEs). Any increase in ground level height Above Ordnance Datum would require the applicant to undertake wireframe analysis to illustrate that each turbine's revised position can be tolerated in the landscape without increased adverse visual impacts.

The maximum tip height of each turbine is controlled by both the application description and by the clause within the micro-siting condition preventing any higher base positions AOD. There is no necessity to repeat tip heights in a separate condition.

### **Residential Amenity**

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

### Noise

The "Renewable Energy" SG states that noise assessments should be carried out within 2km of the site and should follow The Assessment and Rating of Noise from Wind farms (ETSU-R-97) in conjunction with the Institute of Acoustics Good Practice Guide 2013 (IOA GPG). Environmental Health have been consulted to provide advice on whether noise generated by the proposed development, either individually or cumulatively in association with noise from Langhope Rig will have an unacceptable impact on residential receptors.



A noise assessment has been carried out by the applicant and is contained within the ES. This is derived from the background noise survey carried out for the original wind farm scheme, a method accepted by Environmental Health who are also content that the assessment has been undertaken in accordance with the aforementioned regulation and good practice guide. The noise predictions for the development have been undertaken using the recommended noise modelling methodology and correction factors.

Noise levels arising from the development have been calculated and a table of noise limits has been produced, giving a maximum level for each identified receptor at each integer wind speed. Separate tables have been produced for day time and night time. There are no financially involved properties identified. The Assessment has also undertaken a cumulative impact study including noise from the Langhope Rig wind farm

Environmental Health has confirmed that the modelling and assessment work undertaken in connection with this application has demonstrated that there will be no unacceptable noise impacts on local receptors from the operation of the wind farm. There is one property, Easter Ale Moor, where a risk of exceeding of noise thresholds has been identified at a wind speed of 7m/s by the level of 0.9dB. Cumulative noise will also exceed the threshold at Langhope Farm at wind speeds of 6-12m/s by up to 1.3dB. The ES states that "...the proposed development will be operated in such a way that operational noise levels remain within these limits".

Although this has been queried by objectors who believe that any exceeding of the limits should determine the scheme is not acceptable or requires adjustment, Environmental Health do not object to the development and consider that a specific condition requiring mitigation, as proposed by the applicant to address the issue, would resolve matters. Whilst this is doubted by objectors, the recommended condition would be suspensive requiring agreement of the mitigation before any development could commence.

As standard practice, it is also recommended that the condition adopted by the Scottish Government is used to control noise levels from the development. If planning permission is granted it would then be the responsibility of the developer/operator to comply with these noise limits. The condition sets out a requirement on the operators of the development to appoint independent noise consultants to record noise emissions from the development and to investigate and resolve any noise issues and complaints to the satisfaction of the Planning Authority.

In terms of construction noise, the ES states that construction will not take place at nights or weekends. The applicant has undertaken an assessment of the noise arising from construction of the scheme, including blasting within the borrow pits and traffic movements within the site and along local roads. This concludes that no major noise impacts are predicted, the noise levels predicted to be below the lowest construction noise threshold levels. Although an outline Construction Method Statement has been provided within the ES, it is intended to control noise impacts by condition via a final Construction Method Statement. A condition will also control the timing of construction activity.

In summary, there are no noise-related reasons to consider that the scheme could not be in compliance with LDP Policies and Supplementary Guidance. Albeit the development has moved north, it is also noted that there were no noise-related issues identified by the Council or the Reporter with the original scheme.

## Shadow Flicker

Policy ED9 and the “Renewable Energy” SG require assessment of residential amenity to include the impacts caused by shadow flicker. The ES includes the relevant assessment at Annex I. The Study Area of 2km reflects advice within the SG, following on from a 2015 research paper which extended the effects zone from 10 rotor diameters to 2km. Within the 2km zone, three inhabited dwellinghouses were identified – Easter Ale Moor, Whitslade and Hawksnest. These range from 1.25 – 1.36km from the nearest turbine. None of the three properties are within the cumulative 2km overlap when Langhope Rig is considered so no cumulative effects require to be assessed.

In terms of established maximum shadow flicker effects that are considered to be acceptable, there are no statutory UK figures although best practice suggests a worst case scenario of 30 hours per year or 30 minutes on the most affected day. The best practice also suggests a more realistic threshold of eight hours per year. The assessment identifies that none of the three identified properties are within the previous guideline of ten rotor diameters.

The results demonstrate that there is no significant shadow flicker effect at all three identified properties. The greatest impact would be expected at Hawksnest where in the worst case scenario, 0.17 hours on the most affected day and 7.48 hours per annum would be well within the best practice thresholds. Similarly, under the realistic scenario, Hawksnest would experience 0.03 hours on the most affected day and 1.11 hours per year.

The findings of the assessment demonstrate that there is no significant impact on residential amenity caused by shadow flicker. This was similarly not an issue when the original scheme was considered.

## **Cultural Heritage Impacts**

The application has to be assessed against Policy ED9 in respect of impacts on the historic environment and Policy EP8 which seeks to protect the appearance, fabric or setting of Scheduled Monuments or other national, regional or local significance. Development proposals that adversely affect such sites would only be permitted if it is demonstrated that the benefits of the proposal clearly outweigh the heritage value of the asset and there are no reasonable alternative means of meeting the development need. The supporting text of Policy EP8 establishes the aim of the policy is to give Scheduled Ancient Monuments and any other archaeological or historic asset or landscapes strong protection from any potentially damaging development.

The Council’s “Renewable Energy” SG contains advice on assessing the impacts of wind energy developments on the historic environment, both direct and indirect impacts. It augments the aforementioned Policies and also provides information on how setting of historic structures and places are assessed, including the use of guidance from Historic Environment Scotland – “Managing Change in the Historic Environment: Setting”.

The Council’s Archaeology Officer does not object to the application but does have concerns that the development impacts on the setting of the Scheduled Monument, Kemp’s Castle, to a degree of adverse moderate significance. This is discussed below.

## Direct Impacts on Known and Unknown Assets

The Council's Archaeology Officer advises that impacts will be to three known assets – two tracks and an earth bank. The impacts will be linked to access tracks crossing the routes of the assets, with one turbine and crane pad also affecting one of the tracks. The ES proposes that in order to mitigate the loss or damage of these features through development, archaeological intervention is required. This can be covered by a condition for a Written Scheme of Investigation can also be broadened to include all mitigation works, including post-excavation analysis and appropriate dissemination of results, as an alternative. The exact mechanism of delivery can be negotiated following consent.

The ES also suggests there is some potential for encountering buried archaeological features. The Archaeology Officer considers that the landscape is largely covered by thick vegetation and blanket peats making identification of features difficult without intensive survey. He disagrees slightly regarding preservation of remains within peat, especially within deep peat – this is likely to contain at least paleo-environmental evidence (preserved pollens, seeds, vegetation) of prehistoric and later date that can be used to re-construct a sense of land-use over time. Although it is agreed that there is a low potential for encountering buried archaeological features through development, the Archaeology Officer suggests a mitigation strategy consider the potential for peats and water-logged sub-soils to contain paleo-environmental evidence. This should include both a watching brief and targeted paleo-environmental sampling, all included within the Written Scheme of Investigation.

## Setting

With the exception of impacts on Kemp's Castle, the Archaeology Officer is satisfied that the ES has adequately assessed potential impacts on the setting of designated and undesignated sites. There is some concern, however, that more information could have been provided regarding what elements of the development contribute to significant effects, rather than presuming it is the development as a whole.

Two significant impacts are identified by the ES on Scheduled Monuments – Kemp's Castle and Leap Hill. Impacts on Leap Hill are considered to be of minor significance and thus there is no maintained concern by the Archaeology Officer or HES. However, the ES judges impacts to be moderately significant on the setting of Kemp's Castle, agreed by both the Archaeology Officer and HES.

The Archaeology Officer does not agree, however, with the ES assumption that long distance views of the Castle were not important in establishment of it and its associated settlements and field systems. The ES does establish that long distance views of the western part of Kemp's Castle are to the south and south-west, especially from the western Ale Water valley. The eastern parts of Kemp's Castle, set on a ridge, have panoramic views in all directions, interrupted only by woodland. Of particular historic significance are the views south and south-west to other contemporary settlements. Visibility of water features from the Castle would have also been of importance for stock and agricultural purposes, especially the Ale Water. The Archaeology Officer considers that, whether intentional or not, the views are a key element in appreciation of the site and the ES has significantly underestimated this aspect of the setting. This also applies to views towards the Castle.

Whilst the Archaeology Officer agrees with the ES identifying impacts to be moderately significant and adverse, the impacts on views out from the Castle are particularly affected by the domination of the turbines over the Ale Water Valley, emphasised by the Bleakhill Burn. He identifies that Turbine 5, in particular, overtops the valley and creates dominance impacts on the setting of Kemp's Castle. Unless this turbine is omitted or moved, the Archaeology Officer considers that Policies ED9 and EP8 could be contravened in terms of adverse effect on setting of a Scheduled Monument. However, he does not object to the application and recognises that the impacts on setting must be viewed in the overall planning balance and assessment of the wider application.

The concerns of the Archaeology Officer were responded to by the applicant in the form of a more detailed appraisal of the setting impacts on Kemp's Castle, including new wirelines from the eastern and western settlements. Whilst much is agreed regarding long distance views and setting preservation, there is still concern from the Archaeology Officer that the Ale Water and Bleakhill Burn valley settings have been underestimated in terms of historic significance. Turbine 5 is still considered to encroach into the Ale Water catchment adversely affecting the integrity of the perceived historical relationship. Even if omitted or moved, however, there would still be a moderate significant impact on the setting of Kemp's Castle.

The views of the Archaeology Officer have been raised with the applicant and there is no amendment proposed to Turbine 5 as they do not consider there to be justification. Given that the Archaeology Officer is not objecting to the application and suggests the recommendation to move or omit Turbine 5 is considered in the overall planning balance, it is also important to consider the views of HES on setting impacts as part of that balanced judgement. They do not raise any objection in terms of impacts on the setting of either Kemp's Castle or Leap Hill. Whilst they have some comment upon methodology and the slightly increased cumulative impacts, especially on Leap Hill, there is no comment to suggest they share the same strength of concerns as the Archaeology Officer. They consider the integrity of the setting of Kemp's Castle to be maintained despite the moderately significant effects.

Taking into account their views and the lack of objection from the Archaeology Officer, whilst also recognising that even without Turbine 5, the remainder of the scheme would still have moderately significant impacts on setting which have not warranted an objection, it is not considered that there is sufficient justification to seek omission or relocation of the turbine. Indeed, whilst modest micro-siting within the normal 50m allowance would be carefully assessed in terms of impacts on this setting, greater relocation could cause issues of design, clutter, visual impact etc. It should also be noted that, whilst the scheme has resulted in relocation and omission of a turbine, there were no archaeological reasons for the rejection of the initial Barrel Law application, nor indeed any particular concerns expressed in the original Committee Report or Reporter's Decision Letter. These points have also been made by the Applicant in the Supporting Statement.

Subject to conditions controlling direct impacts on known and unknown archaeology, it is considered that the development would be generally in compliance with LDP Policy ED9 and the "Renewable Energy" SG. There is insufficient justification to refuse or seek amendment to the scheme under the aforementioned Policies, Guidance and LDP policy EP8, taking into account the comments received and the overall planning balance.

#### Other Cultural Heritage Impacts

Policy EP7 seeks to safeguard the character, integrity and setting of listed buildings. Policy EP9 has similar aims for Conservation Areas and EP10 for Gardens and Designed Landscapes. Policy ED9 also requires wind energy development to consider the effects on these cultural heritage assets and this is augmented in the “Renewable Energy” SG.

There are no such cultural heritage assets within the site nor within 1km. Within the 1-5km range, there are 9 listed buildings including the Category A “Harden” 4.3km south-east. The nearest listed building is the Category B “Todrig Tower House” 2.1km north-east of the closest turbine. Within the 5-10km study distance, there are 202 listed buildings (8 Category A), two Gardens and Designed Landscapes (Bowhill and The Haining), one Conservation Area (Hawick) and an historic battlefield (Philiphaugh).

The ES findings resulted from ZTV and visibility assessments within and outwith the 5km range, including further investigation and field visits. No effects were identified on the setting of any listed buildings within 5km any greater than “negligible” and there were similarly no effects identified on the Conservation Area or either Garden and Designed Landscapes. Notable listed buildings such as Harden, Todrig, Borthwickshiels and Chisholme House may have some theoretical visibility but, following site assessment, ratings of “negligible” impact on setting have resulted from consideration of alignment, tree cover etc.

The findings of the ES are accepted in relation to impacts on cultural heritage assets other than archaeological sites and it is considered that the proposal complies with LDP Policies ED9, EP7, EP9 and EP10 together with the “Renewable Energy” SG

### **Ecology, Habitat and Hydrology Impacts**

The proposal has to be assessed against policies EP1, EP2 and EP3, which seek to protect international and national nature conservation sites, protected species and habitats from development. Policy ED9 requires consideration of the impacts on natural heritage, hydrology and the water environment, augmented by the “Renewable Energy” SG. The ES contains an assessment of the likely impacts on ecology, the water environment, water supplies and flooding and puts forward mitigation measures through a series of reports.

The proposed development is not located within any international or nationally important areas of nature conservation or known protected species. The closest sites are the River Tweed SAC/SSSI and the Ale Moor West Meadow and Loch SSSI. SNH accept that whilst there may be connectivity, there would be unlikely to be significant effects on the qualifying interests of the SAC provided appropriate mitigation is put in place. This would include the Outline Construction Method Statement in Appendix 3 of the ES. On this matter, the Council Ecology Officer agrees.

The site largely occupies a habitat of marsh/marshy grassland, coniferous woodland, bog, bracken and dry/wet heath. The Ecology Officer notes that whilst there is a reduced land take of heath compared to the earlier application, bog habitats are predicted to be lost. This is of some concern and should be compensated for in the Habitat Management Plan, including impacts on peat and floating tracks where appropriate. SNH seek an adjustment to an access track to avoid an area of deep peat. SEPA had also initially objected due to lack of information on the management of peat but subsequently withdrew their objection on the basis that a fully detailed Peat Management Plan would be required by condition.

In relation to ornithology and mammals, the Ecology Officer has concerns over the adequacy of bat surveys, considering that the updated 2016 surveys do not comply with survey requirements for a low risk site. However, he notes that SNH are content with the bat surveys carried out and subsequently accepts that impacts are unlikely to be significant on bats, aided by clarification of the stand-off distance for Turbine No. 6. The Ecology Officer and SNH have no specific concerns about other wildlife impacts, including impacts on badger, otter, red squirrel and common lizard. The ES does identify further mitigation will be necessary for impacts on black grouse. This is also likely to be required off-site and can be included in the Habitat Management Plan. This should also include measures for habitat loss as well as for reptiles and breeding waders. SNH also welcome the Habitat Management Plan which should cover Species Management in relation to black grouse. The RSPB also welcome this.

The Ecology Officer recommends further conditions to cover an Ecological Clerk of Works, a Construction Environmental Management Plan (CEMP), a Species Protection Plan, an Ecological Monitoring Programme and a monitoring/mitigation plan for goshawk. There would also be a significant ecology involvement in the details of the Decommissioning and Aftercare Plan that would be required. SEPA have confirmed their requirements for pollution prevention measures in the CEMP and Construction Method Statement.

SEPA initially objected regarding the impact of the development on the water environment. Whilst the ES proposed mitigation in relation to groundwater impacts through site layout, best practice construction methods and site management, SEPA requested further information on water courses, infrastructure and peat depth to allow assessment of effects on Groundwater Dependent Terrestrial Ecosystem (GWDTEs). They also objected due to concerns over direct and potential dewatering impacts on the private water supply for Easter Ale Moor, given that dewatering of the borrow pits is anticipated. Six private water supplies were identified within 2km of the development but none within 100m.

Further discussion ensued on groundwater matters between SEPA and the applicant, SEPA then withdrawing their objection on impacts on the private water supply, once more detailed information was provided about the source of the supply in relation to the nearest turbine and access track. They requested that any micro-siting, however, was away from the water source. Environmental Health request a condition on planning consent requiring a scheme of mitigation to protect the private water supplies

In relation to impacts on GWDTEs, the concerns of SEPA related mainly to impacts caused by three of the seven turbines, the remaining impacts being able to be addressed through the CEMP and via the Ecological Clerk of Works. SEPA had initially considered that their concerns regarding the other turbines could be addressed through additional survey work and micrositing of the turbines – albeit they could not accept that the micrositing would necessarily be restricted to the normal 50m. After further information and discussion, SEPA indicated they would be willing to accept a condition requiring micrositing of no further than the normal 50m allowance, subject to submission of further survey work and provided that survey work justified the movement of Turbine 3. On that basis, SEPA have withdrawn the final element of their objection.

In terms of flood risk, the site is not at risk from a flood event with a return period of 1 in 200 years. However there are a number of small watercourses located within the

site that may be at risk of flooding. Overall, there is minimal flood risk to the site so the Council's Flood Protection Officer has no objections to the proposal on the grounds of flooding provided requirements regarding hard surfaces, silt traps to minimise the amount of sediment entering the watercourse, culverts and water crossing are agreed.

Water supply impacts also initially concerned Scottish Water over the drinking water catchment of Alemoor Reservoir and the proximity of the access track and borrow pits. They had requested either relocation outwith the catchment of all infrastructure or submission of more detailed information to resolve their concerns. The applicant provided additional information which led to withdrawal of their objection, subject to contractors being provided with information on water catchments and adequate water protection measures along the access route shared with Langhope Rig.

Subject to the aforementioned conditions, the impacts of the development on ecology, habitats and hydrology are considered to be acceptable and in compliance with LDP Policy ED9 and the approved "Renewable Energy" SG.

### **Traffic and Road Safety**

Policy ED9 of the LDP requires impacts of the construction on wind farms on public and trunk roads to be considered, the approved "Renewable Energy" SG also requiring full consideration of the impacts including the structural and physical ability of the network to accommodate the traffic and impacts on local communities.

The ES states that traffic to the site during the construction phase (8 months) would consist of construction workers (average 17 personnel per day), HGVs carrying construction materials (including imported aggregate), plant and machinery and abnormal loads vehicles carrying the wind turbine components. The maximum traffic is estimated within Month 3 consisting of 66 HGV movements per day with a further 18 car and light van movements. This corresponds with ground work construction, turbine component delivery occurring later in the eight month period when numbers of movements are much lighter. It also envisages no use of stone from on-site borrow pits.

A finalised route is not specified for the delivery of the turbine components to the site in the ES but it is likely to follow the A68 southwards, the A698 through Denholm to Hawick, Hawick High Street then the A7 to the B711 junction to Roberton. The site access would then be that serving Langhope Rig, 10.5km from the A7. Upgrading works have been identified to facilitate the abnormal loads, following a Transport Assessment and Swept Path Analysis. Mitigation is fully set out in Section G of the ES which also includes before/after road condition surveys, a Traffic Management Plan and signage. The greatest effects are envisaged to be upon pedestrian users of the B711, albeit the ES feels such impacts would affect relatively low numbers.

The Roads Planning Service has no objections to the principle of a wind farm in this location, noting that the route was used for the construction of the Langhope Rig wind farm. However, they do require a number of issues to be addressed. A Traffic Management Plan (TMP) is required to be submitted for approval before the development is commenced together with details of the National Grid connection. Given the turbine components are larger than Langhope Rig, further swept path analysis and mitigation require to be submitted for approval, any accommodation works potentially requiring planning permission in their own right. In terms of the abnormal load movements, full consultation would be necessary with Police Scotland

as they had concerns over the number of components with each delivery for Langhope Rig

Roads Planning also will require joint pre and post construction surveys to identify and seek any necessary mitigation in the form of remedial works. There has been particular concern expressed to Roads Planning over the condition of the B711, a theme also followed in the submissions from objectors to the application. Concerns are also expressed over Denholm village impacts. Whilst all concerns over traffic and road impacts are noted, Roads Planning do not object and there was previously acceptance of the construction of Langhope Rig. Similarly, the initial Barrel Law scheme was not refused on roads grounds. It is concluded that, subject to appropriate conditions and mitigation agreed within those conditions, there are no roads grounds to reject the application against Policy ED9 or the approved "Renewable Energy" SG.

### **Public Access and Footpaths**

Policy ED9 requires the impact on public access to be considered and the approved "Renewable Energy" SG seeks proof that any turbines within 2km of a core path or other significant access route would not have a significant impact on the path or route. There are no claimed rights of way or core paths on the site apart from a small section of Right of Way BE132 that consists of the shared access route through Hyndhope and Alemoor Forest to the Langhope Rig wind farm. There are three sections of other Rights of Way within 2km of the nearest turbines, the nearest being 0.6km to the south-east (BE38 Easter Alemoor to Whitslade).

The ES considers there to be some construction impacts on BE132 for a temporary period but, overall, minor or negligible impacts on the public accesses and footpaths surrounding the site. The Council's Access Officer advises that there should be no obstruction to that route. The Officer also notes there would be clear visibility from several noted routes such as the Borders Abbeys Way and the Cross Borders Drove Road and that the ES states good practice would be followed during construction. The Officer raises no objection but considers that conditions should cover agreement of a Path Planning Study, no obstruction to the right of way and the availability of new tracks to the public once the development is complete.

The Access Officer also recommends that developer contributions should be sought for the promotion, maintenance and management of the wider path network in the local area. However, this is not considered to be appropriate as this would affect land outwith the applicant's control and is not a direct requirement of the development. This is a similar stance to that taken on other wind farm developments where the request has also been made.

Subject to the aforementioned conditions, it is considered that the impacts on the path network are in compliance with Policy ED9 of the Local Development Plan and the requirements of the approved "Renewable Energy" SG.

### **Ministry of Defence/Aviation**

Policy ED9 of the Local Development Plan advises that proposals will be assessed against "...aviation and defence interests and seismological recording". This is augmented in the approved Supplementary Guidance by stating that schemes will be supported unless there would be significantly detrimental effects on such interests. The initial Barrel Law scheme was refused by the Council then rejected on appeal for adverse impacts on both the Eskdalemuir Seismological Recording Station and the



Deadwater Fell ATC Radar at RAF Spadeadam. The Ministry of Defence had maintained objections on that scheme. The Government Reporter had also visited RAF Spadeadam before determining the appeal.

The applicant has addressed aviation and defence in Annex K of the ES. It concluded that the issue over distance from Eskdalemuir was resolved in 2014 with acceptance that the noise budget could cope with cumulative impacts from 15-50KW. On the issue of Deadwater Fell, the applicant believes the new radar installation in 2016 has led to acceptance of impacts from the proposed, and other developments, as not being significant. The planned replacement of this radar with a new version in 2019 will further reduce impacts due to mitigation built into the design.

In consultation responses on this revised application there appear to be no aviation or radar issues with regard to civilian aircraft. No objections have been received from Edinburgh Airport or NERL. However, the Ministry of Defence originally objected to the application. They considered that the scheme would be detectable from, and cause unacceptable interference to, the ATC radar at RAF Spadeadam, creating confusion in the management and separation of military and civilian aircraft. This includes restrictions on arrival/departure routes into the range, restriction on aircraft operating areas, ZONE traffic patterns, entry/exit from the Low Flying System and frequency of provision of the Traffic Service and Deconfliction Service. They also commented that research was ongoing into solutions and suggested the developer consider mitigation. They were also concerned that there would be further erosion of the Low Flying Area which is used to train against radar systems at Spadeadam and that there may be interference against threat radar at Wigg Knowe. If all these issues could be overcome, the MOD would then request infra-red or omni-directional red lighting at the highest practicable level.

The applicant has been in liaison with the MOD over their objections and this has been the main reason for the delay in presenting the application for decision to Committee. However, after further consideration, the MOD have now withdrawn both their objections to impacts on the Wigg Knowe threat radar and on low flying, subject to omni-directional or infra-red lighting being required by condition and fitted at the highest practicable level. With regard to impacts on the ATC radar at Spadeadam and after further consideration of the technical mitigation advanced by the applicant, the MOD have also withdrawn this final part of their objections subject to an appropriately worded condition.

This condition will require the submission and approval of an Air Traffic Control Mitigation Scheme (by the Planning Authority after liaison with the MOD) and the full implementation of all the measures included in the mitigation scheme. There are a number of recent examples of wind farms that have been determined subject to such mitigation schemes, including within the Borders eg. Windyedge, Aikengall IIA, Whitelaw Brae and Pines Burn. What has differed, within the relevant conditions attached to these schemes, is the timing element. Whilst some conditions state that there should be no development until such a scheme has been approved, there has also been acceptance that a two stage approach would be possible, allowing groundworks but no turbines to either be erected or operational until the approval and implementation of the mitigation scheme.

There are issues with both approaches. The Council argued at Gilston Wind Farm that, to enable ground works before any mitigation scheme was approved, presented a substantial risk, not only to the developer but also to the environment if such a scheme could not, subsequently, be agreed. Developers are concerned that the agreement processes for such a scheme could significantly delay the

commencement of those elements of the scheme that could not affect the principle purpose of the condition ie.. interference with Air Traffic Control Radar. The MOD, within their consultation response and whilst accepting some development could occur without a mitigation scheme being approved, urges some caution regarding the time and cost of meeting the condition which “...*should not be underestimated by the applicant*”.

Given the stance of the Council on Gilston and Pines Burn (in terms of the Departmental recommendation), it could be considered that it would be unreasonable and imprecise to allow development before the submission and approval of the mitigation scheme. This could pose a risk of allowing unnecessary development to occur on the ground that could become redundant should a mitigation scheme not be agreed, despite the indications that it could. However, it is also clear from the MOD response that they accept the wording “*No turbines to be erected*” on the basis that they have been liaising with the applicant on suitable mitigation and there is an expectation that such mitigation will both be proposed and will, ultimately, prove acceptable. They go further in their latest response and state that the technical mitigation proposal has been accepted.

The reason for the condition is to ensure protection of radar and air traffic control operated by the MOD. It is clear that it is the vertical and moving elements of the proposal that would cause the issues to their facility. As it is their facility that is intended to be protected by condition, the MOD response should carry significant weight in considering the timing of the condition. They draw a distinction in timing dependant on whether mitigation proposals have been discussed and accepted leading up to the decision on the application. In this case, there has been a mitigation scheme submitted and accepted, allowing them to agree to a wording which states “*No turbines to be erected*” rather than “*No development to be commenced*”, making it, in effect, a phasing condition. For this reason, it is considered that the condition, in this instance, should be on the basis of the MOD advice. Had there not been any discussion or progress made towards a mitigation scheme, then the wording would have been retained as “*No development to commence*”.

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

Wind energy developments can make an important contribution to the UK economy. Net economic impact is a material planning consideration and local and community socio-economic benefits include employment, associated business and supply chain opportunities.

SPP states that where a proposal is acceptable in land use terms, and consent is being granted, local authorities may wish to engage in negotiations to secure community benefit. The Scottish Government’s Good Practice Principles for Shared Ownership of Onshore Renewable Energy Developments advises that where local benefits are proposed through a shared ownership opportunity and there is an intention to secure a partner organisation, this may be taken into account in determining a planning application.

The ES outlines the socio-economic benefits of the development and these include:

- Direct and indirect job creation (estimated at 30) during the construction and operational phase of the wind farm and the use of some local contractors;
- Investment in Scottish Borders economy of £8 million

- Community Benefit Fund for community projects and/or
- Shared Ownership Scheme allowing the community to invest in the project and receive an annual return.

It is accepted that some jobs would be created during construction if the developer uses local firms and businesses and there is the potential for employees to use local facilities and services, such as accommodation and shops. Following the construction phase a relatively low level of employment would be generated, though this would rise again during decommissioning. It is also noted that a number of objectors query the benefits of the construction of the wind farm to the local economy, stating that experience of the Langhope Rig development resulted in little local employment and a Community Fund hard to access.

One issue of significance raised in the representations received is the impact of the wind farm development on tourism. This has been particularly highlighted by the Community Council responses. Tourism is a well-established and valuable contributor to the Borders economy based on the scenery and the natural and cultural environment. Policy ED9 and the approved “Renewable Energy” SG seek an impact statement on tourism and recreation to be submitted with any application. Visit Scotland also responded seeking an impact statement

Whether the wind farm would deter visitors from this area is difficult to quantify. There are reports submitted by objectors to counter the impact claims made by the applicant in Section H of the ES. In the ES, it relies on a series of Customer Surveys by the Government, the Council and, in particular, the Biggar Economics Report from 2016. The conclusions are that wind farms would not detrimentally impact on tourism. This is contested in submissions by objectors who claim there would be increased detrimental economic impacts, not just on tourism but also on property prices and other local economy matters. The applicant counters with references to several appeal decisions where it was felt there was no convincing evidence that wind farms detrimentally affected tourism.

Similarly within the recent Pines Burn decision, the Reporter attached some weight to the 2013 Council study which concluded that wind farms did not have any significant effect on tourism. Despite similar claims from the local community and tourism businesses, he was not persuaded there was any evidence to show there would be significant adverse impacts on tourism. Taking all matters into account, it is considered that there is no firm evidence that the proposal would have significantly adverse effects on tourism in this part of the Borders.

The socio-economic benefits of the proposed wind farm development can be taken into account as a material consideration in assessing the application. It is clear that there are arguments on economic impact from both sides. It is possible that there may be some economic gain but the objectors believe this would not be the case. The potential for such benefits and thereby economic growth in the consideration of energy proposals must be balanced against any potential adverse environmental impacts that are likely to occur. In this case, the changes in the scheme siting and design combined with the compliance with the Landscape Capacity Study are the principal reasons why the scheme can now be considered to be in compliance with local and national renewable energy policies. The claimed socio-economic benefits or disadvantages have, therefore, less material weight on the acceptability of the scheme in the overall planning balance and are not sufficient, in themselves, to affect the final recommendation.

### **Renewable Energy benefits**

The national background to renewable energy progress and targets is set out in Chapter 4 of the ES. NPF3 is clear that the planning system must facilitate the transition to a low carbon economy and facilitate the development of technologies that will help to reduce greenhouse gas emissions from the energy sector. The efficient supply of low carbon and low cost heat and electricity from renewable energy sources are vital to reducing greenhouse gas emissions and can create significant opportunities for communities. This has been augmented by more recent publications, including the Climate Change Plan, Onshore Wind Policy Statement and Scottish Energy Strategy. LDP Policy ED9, therefore, requires consideration of the scale of contribution to renewable energy generation targets and the effect of greenhouse emissions.

SPP supports the development of a diverse range of electricity generation from renewable energy technologies. It contains the following targets:

- 30% of overall energy demand from renewable sources by 2020;
- The equivalent of 100% of electricity demand from renewable sources by 2020.

The 2017 Scottish Energy Strategy updated the contribution percentages to 50% of overall energy demand by 2030 from renewable resources and an increase in production of energy use by 30% across the Scottish economy.

This proposed development would have a total installed capacity of 24.5MW, producing electricity to serve up to 16,300 homes and saving 40,000 tonnes of carbon emissions each year. The weight to be attached to this contribution is significantly questioned by objectors who submit information to suggest that ample consented and operational capacity exists to comfortably meet, and on the latest figures, exceed targets. They quote that 19.1GW operational or consented is more than sufficient to allow less weight to be attached to the proposed scheme. They state that only 0.3GW is needed to become operational to reach the 2020 target of 100% of electricity use from renewables and that this is projected to rise to 140% by 2030, in the region of 17GW. There is also particular criticism of the Government's energy policy in relation to wind farms.

The applicant has responded in the Supporting Statement by stating that against the 30% overall energy demand target by 2020, 17.8% had been achieved by 2015. They also quote that the Government uncapped target of 100% of electricity use from renewables by 2020 stood at 69% last year. Their Supporting Statement updates with March 2018 figures stating 21.4GW of relevant schemes "in the pipeline" of which 10.4GW was operational and 8.7GW consented. The applicant acknowledges that, although there have been very recent increases in the amount of electricity produced by operational schemes, a 31% shortfall with three years to go still represents a significant shortfall. They summarise in para 2.70 of their Supporting Statement that "need" for a renewable energy development should not be a material factor in any planning balance, given that the latest Government renewable energy guidance reiterates that targets are not caps and that weight should continue to be attached to the contribution of every scheme towards the targets.

Local Development Plan Policy ED9 does state that there should be consideration in any proposed renewable energy development of both greenhouse emissions and the scale of contribution to renewable energy targets. In the case of this scheme, the contribution would be relatively modest compared to larger developments and the amount of weight to be attached in the overall planning balance potentially reduces

as a result of the scale of the scheme and given the increasing rate of progress towards renewable energy targets. The Reporter also took this view when rejecting the initial Barrel Law scheme.

However, the applicant disagrees and views the contribution as valuable, believing the shortfall is still significant. Certainly, the Reporter, in considering the energy target position on the Pines Burn appeal, restates the position that the Government Policy is meant to be ambitious and there should be no attempt to cap provision, provided a balanced approach is taken relating to environmental impacts. Had the environmental impacts been considered to be marginal and unacceptable, then the renewable energy contribution of this scheme may not have been sufficient to outweigh those environmental impacts. However, as it is considered that the environmental impacts and landscape capacity allow for acceptance of the scheme, the contribution offered by the scheme towards renewable energy targets can be considered to be positive in the overall planning balance.

The same should be considered for the contribution towards carbon reduction, the scheme claiming 40kt of CO<sub>2</sub> per annum whereas some objectors claim Scotland is already carbon neutral. The applicant also points out the increased targets in the latest Climate Change Bill of 56% reduction by 2020 and 80% by 2050. Given there is no specific evidence to disprove the level of carbon reduction claimed, the scheme's contribution to lowering CO<sub>2</sub> should be considered positive in the overall planning balance, albeit weighted in accordance with the modest scale of the scheme.

## **CONCLUSION**

The Council remains supportive of wind energy development, as reflected in its policies and guidance. This application must be fully considered against current Policies and Guidance, including new Government publications, the Council's approved "Renewable Energy" SG and the Ironside Farrar Landscape Capacity Guidance. The scheme should also be fully assessed against the reasons for previous rejection and the various changes examined in relation to those reasons. As required by policy considerations, the advantages of energy production and the disadvantages of environmental impacts must be carefully weighed against one another.

In terms of landscape and visual impact, the site does retain a high level of containment from middle and longer distance views, limiting the visual impact to wider view. Impacts are more significant in closer proximity from a limited number of viewpoints, any reductions in hub, base and tip height partially offset by increased blade diameter. In this respect, influential viewpoints from the William Ogilvie Cairn site and at Easter Ale Moor continue to demonstrate that, whilst improved, those improvements are not sufficient in themselves to result in acceptable impacts. Nevertheless, as explained by the Landscape Architect in his response, rejection of the revised scheme could not be justified for these reasons alone. It is considered that from the majority of the viewpoints, the improvements in the scheme result in impacts that can no longer be considered sufficiently adverse when considered against other factors in the overall planning balance.

Amongst those other factors to be considered are the findings of the Ironside Farrar Landscape Capacity and Cumulative Impact Study which offers support for the development of very large turbines in this specific part of the Borders, identifying capacity for 5-10 further turbines within an area already containing Langhope Rig. The cumulative impact of the two wind farms together is considered to be improved

over the previous relationship and, whilst those improvements are relatively modest, it is considered that the Landscape Capacity Study intends that the two wind farms be considered as a group around which there should be no capacity for further development. Taking into account the limited number of receptors that would be significantly affected by the development and the lack of objections from SNH and the Council's Landscape Architect there are insufficient reasons to sustain a recommendation for refusal on landscape and visual grounds.

The original scheme was rejected partly as a result of MOD sustained objections for adverse impacts on the Eskdalemuir Seismological Recording Station and the Deadwater Fell ATC Radar at RAF Spadeadam. After consideration of mitigation proposals, the MOD has now withdrawn their objections subject to conditions.

Cultural Heritage impacts are largely related to impacts on the Scheduled Monument of Kemp's Castle and by one turbine in particular. However, neither Historic Environment Scotland nor the Council's Archaeology Officer formally objects to the proposals. Given this and the fact that the previous scheme was not rejected for any archaeological reasons, it is considered that there are insufficient reasons to reject the revised scheme.

Other aspects of the development can be mitigated and controlled through conditions and various reports and mitigation strategies required. This will include ecology, noise, road and traffic impacts. It is also acknowledged that the proposal would make a contribution towards energy targets.

Taking the above conclusions into account, it is considered that the scheme complies with national and local policies and guidance on renewable energy development and also demonstrates that any detrimental impacts of the proposal are no longer so significant as to warrant refusal of the revised scheme.

The commencement recommendation of allowing five rather than three years (Condition 2 below) reflects acceptance of the applicant's request and a number of recent appeal decisions, also reflecting the nature and number of fully suspensive conditions that require to be addressed and discharged.

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

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

#### **CONDITIONS**

##### **Commencement and Conformity**

1. The consent is for a period of 25 years from the earlier of: i) the date when electricity is first exported to the electricity grid network from all of the wind turbines hereby permitted; and ii) the date falling 18 months after electricity is generated from the first of the wind turbines hereby permitted. Written confirmation of the date on which electricity is generated from the first of the turbines hereby permitted shall be submitted to the Planning Authority no later than one calendar month after that date. The consent will expire at the end of the 25 year period unless the planning authority has expressly approved an extension in writing.

Reason: To define the duration of the consent.

2. The commencement of the development shall be no later than five years from the date of this consent. Written confirmation of the intended date of commencement of Development shall be provided to the planning authority no later than one calendar month before that date.

Reason: In accordance with section 58 of the Town and Country Planning (Scotland) Act 1997. To avoid uncertainty and ensure that the consent is implemented within a reasonable period.

3. The development hereby permitted shall not be carried out otherwise than in complete accordance with the application, drawings, Environmental Statement and other documentation lodged in support of the application and approved by the Planning Authority.

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

4. This consent may not be assigned without the prior written authorisation of the Planning Authority. The Planning Authority may authorise the assignation of the consent (with or without conditions) or refuse assignation as they may, in their own discretion, see fit. The consent shall not be capable of being assigned, alienated or transferred otherwise than in accordance with the foregoing procedure. The Company shall notify the Planning Authority in writing of the name of the assignee, principal named contact and contact details within 14 days of written confirmation from the Planning Authority of an assignation having been granted.

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

### **Micro-Siting**

5. All wind turbines, buildings, masts, areas of hardstanding and tracks shall be constructed in the location shown on Drawing Reference Figure 1.3. Wind turbines, buildings, masts, areas of hardstanding and tracks may be adjusted by micro-siting within the site. However, unless otherwise approved in advance in writing by the Planning Authority (in consultation with SEPA and Scottish Natural Heritage), micro-siting is subject to the following restrictions:

- a) No wind turbine foundation shall be positioned higher, when measured in metres Above Ordinance Datum (Newlyn), than the position shown on Figure 1.3 unless a scheme of details, including wirelines showing the alternative positioning of the turbine have been submitted to and approved in writing by the Planning Authority (in consultation with Scottish Natural Heritage and SEPA) and thereafter no development shall take place except in strict accordance with the approved details;
- b) No wind turbine, building, mast, access track or hardstanding shall be moved more than 50m from the position shown on the approved plan (Figure 1.3);
- c) No micro-siting shall take place within areas of peat of greater depth than the original location;
- d) No micro-siting of Turbine 3 shall take place within areas hosting Ground Water Dependent Terrestrial Ecosystems unless a pre-construction survey and any mitigation has been submitted to, and approved by, the Planning Authority in liaison with SEPA;
- e) No micro-siting shall take turbines closer to watercourses, Scheduled Monuments or residential properties (not financially involved with the development);

- f) No micro-siting of access roads or wind turbines any nearer the Private Water Supplies identified in the Environmental Statement, including the PWS serving Easter Ale Moor.
- g) All micro-siting permissible under this condition must be approved in advance in writing by the Environmental Clerk of Works (ECoW).

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

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

### **Design and Operation of Turbines**

- 6. No development shall commence until full details of the actual wind turbines (including, but not limited to, the power rating and sound power levels, the size, type, external finish and colour, which should be non-reflective pale grey semi-matt), any anemometry masts and all associated apparatus have been submitted to and approved in writing by the Planning Authority. The development to be constructed and operated in accordance with the approved details and maintained in the approved colour until such time as the wind farm is decommissioned, unless otherwise agreed in writing by the Planning Authority.

Reason: To ensure that the turbines are compatible with the locality in terms of their appearance and noise output, to protect residential and visual amenities.

### **Substation and Ancillary Development**

- 7. No development shall commence until final details of the siting, external appearance, dimensions and external materials of the substation/switchgear building, associated compounds, any construction compound boundary fencing, external lighting and parking areas have been submitted to and approved in writing by the Planning Authority. The substation/switchgear building, associated compounds, fencing, external lighting and parking areas shall be constructed in accordance with the approved details.

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

### **Signage**

- 8. Notwithstanding the provisions of the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984 none of the wind turbines, buildings, other structures, means of enclosure or plant shall display any name, logos, sign, lettering or other advertisement (other than health and safety signage) without the prior written approval of the Planning Authority.



Reason: To ensure that the environmental impacts of the turbines and ancillary development forming part of the development conform to the impacts assessed in the Environmental Statement and in the interests of the visual amenity of the area.

### **Turbine Failure/Removal**

9. In the event of any wind turbine failing to produce electricity supplied to the local grid for a continuous period of 12 months, not due to it being under repair or replacement, then it will be deemed to have ceased to be required, and unless otherwise agreed in writing with the Planning Authority, the operator shall:
  - i. by no later than the date of expiration of the 12 month period, submit a scheme to the planning authority setting out how the relevant turbine(s) and associated infrastructure will be removed from the site and the ground restored; and
  - ii. implement the approved scheme within six months of the date of its approval, all to the satisfaction of the planning authority.

Reason: To safeguard against the landscape and visual environmental impacts associated with the retention of any turbines that are deemed no longer to be operationally required.

### **Construction Hours**

10. Construction work on the site which is audible from any noise-sensitive receptor and HGV movements to and from the site (excluding abnormal loads) shall only take place between the hours of 07.00 to 18.00 on Monday to Friday inclusive and 08.00 to 14.00 on Saturdays, with no construction work taking place on a Sunday or on national public holidays (except by prior notification to the planning authority). Outwith these specified hours, development on the site shall be limited to concrete pours, turbine erection, maintenance, emergency works, dust suppression and the testing of plant and equipment, unless otherwise approved in advance in writing by the Planning Authority.

Reason: To safeguard residential amenity.

### **Noise**

11. No development to be commenced until a Construction Method Statement is submitted to, and approved in writing by the Planning Authority. Once approved, all construction activities to comply with the details in the approved Statement.

Reason: To safeguard residential amenity.

12. No development to be commenced until a Scheme of Mitigation is submitted to, and approved in writing by the Planning Authority in respect of exceedances of the consented noise limits at those properties identified at risk in the Environmental Statement. Once approved, the development shall not be operated other than in accordance with the approved Scheme of Mitigation

Reason: To safeguard residential amenity.

13. The rating level of noise emissions from the combined effects of the wind turbines forming part of the Development (including the application of any tonal penalty) shall not exceed the values for the relevant integer wind speed

set out in, or derived from, the tables attached to this condition (Table B4 in the Applicant's Environmental Statement Vol 2 - 1C – Annex B - Noise) at any dwelling which is lawfully existing or has planning permission at the date of this consent. The turbines shall be designed to permit individually controlled operation or shut down at specified wind speeds and directions in order to facilitate compliance with noise criteria and:

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

There shall be no First Commissioning of the Development until the Company has received written approval from the Planning Authority of a list of proposed independent consultants who may undertake compliance measurements in accordance with this condition. Amendments to the list of approved consultants shall be made only with the prior written approval of the Planning Authority.

Within 21 days from receipt of a written request from the Planning Authority following a complaint to it from an occupant of a dwelling alleging noise disturbance at that dwelling, the Company shall, at its expense, employ a consultant approved by the Planning Authority to assess the level of noise emissions from the wind farm at the complainant's property. The written request from the Planning Authority shall set out at least the date, time and location to which the complaint relates and any identified atmospheric conditions, including wind direction, and include a statement as to whether, in the opinion of the Planning Authority, the noise giving rise to the complaint contains or is likely to contain a tonal component.

The assessment of the rating level of noise emissions shall be undertaken in accordance with an assessment protocol that shall previously have been submitted to and approved in writing by the Planning Authority. The protocol shall include the proposed measurement location(s) where measurements for compliance checking purposes shall be undertaken, whether noise giving rise to the complaint contains or is likely to contain a tonal component, and also the range of meteorological and operational conditions (which shall include the range of wind speeds, wind directions, power generation and times of day) to determine the assessment of rating level of noise emissions. The proposed range of conditions shall be those which prevailed during times when the complainant alleges there was disturbance due to noise, having regard to the written request of the Planning Authority under paragraph c, and such others as the independent consultant considers likely to result in a breach of the noise limits.

Where the property to which a complaint is related is not listed in the tables attached to this condition, the Company shall submit to the Planning Authority for written approval proposed noise limits selected from those listed in the tables to be adopted at the complainant's property for compliance checking purposes. The proposed noise limits are to be those limits selected from the tables specified for a listed location which the independent consultant considers as being likely to experience the most similar background noise environment to that experienced at the complainant's property. The rating level of noise emissions resulting from the combined effects of the wind

turbines shall not exceed the noise limits approved in writing by the Planning Authority for the complainant's property.

The Company shall provide to the Planning Authority the independent consultant's assessment of the rating level of noise emissions within 2 months of the date of the written request of the Planning Authority for compliance measurements to be made under paragraph e, unless the time limit is extended in writing by the Planning Authority. Certificates of calibration of the instrumentation used to undertake the measurements shall be submitted to the Planning Authority with the independent consultant's assessment of the rating level of noise emissions.

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

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

Location (including coordinates)	Standardised wind speed at 10 meter height (m/s) within the site averaged over 10-minute periods										
	X	Y	4	5	6	7	8	9	10	11	12
Whitslade	342775	618044	40	40	40	41	43	45	47	50	53
Easter Ale Moor Farmhouse	340646	616059	35	35	35	36	39	42	45	49	53
Langhope Farmhouse	342210	620115	35	36	37	38	38	39	39	41	43

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

Location (including coordinates)	Standardised wind speed at 10 meter height (m/s) within the site averaged over 10-minute periods										
	X	Y	4	5	6	7	8	9	10	11	12
Whitslade	342775	618044	43	43	43	43	44	46	48	50	52
Easter Ale Moor Farmhouse	340646	616059	43	43	43	43	43	43	43	44	48
Langhope Farmhouse	342210	620115	43	43	43	43	43	43	43	43	43

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

### Shadow Flicker

14. No development shall commence until a written scheme has been submitted to and approved in writing by the Planning Authority setting out a protocol for the assessment of shadow flicker in the event of any complaint to the Planning Authority from the owner or occupier of a dwelling which lawfully exist or for which planning permission has been granted at the date of this permission. The written scheme shall include mitigation measures to alleviate any shadow flicker attributable to the development. Operation of the turbines shall take place in accordance with the approved protocol unless the Planning Authority gives its prior written approval to any variations.  
Reason: To offset impacts of shadow flicker on residential amenity.

### **Television interference**

15. No development shall commence until a Television Reception Mitigation Plan has been submitted to and approved in writing by the Planning Authority. The Television Reception Mitigation Plan shall provide for a baseline television reception survey to be carried out prior to the installation of any turbine forming part of the development, the results of which shall be submitted to the Planning Authority. The approved Television Reception Mitigation Plan shall thereafter be implemented in full.

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

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

### **Air Traffic Safety**

16. No development shall commence until the developer has provided written confirmation to the Planning Authority and the Ministry of Defence of the:
- a) Anticipated date of commencement and completion of each stage of construction;
  - b) The maximum height above ground level of construction equipment, each turbine and any anemometry mast and
  - c) The position of each turbine (in latitude and longitude).

The developer shall provide the Planning Authority and Ministry of Defence with details of any changes to this information as soon as reasonably practicable.

Reason: In the interests of aviation safety.

17. Prior to the erection of the first wind turbine a scheme of aviation lighting for the wind farm shall be submitted to and approved in writing by the Planning Authority in consultation with the Ministry of Defence. The scheme shall include details of infra-red aviation lighting to be applied. The turbines shall be erected with the approved lighting installed and the lighting shall remain

operational throughout the duration of the consent. No other lighting other than that described in the scheme shall be applied at the site unless otherwise agreed in advance and in writing by the planning authority.

Reason: In the interests of aviation safety.

18. No turbines shall be erected until an Air Traffic Control Mitigation Scheme setting out measures to mitigate impacts of the development upon the Primary Surveillance Radar at RAF Spadeadam Deadwater Fell ("the Radar") and the air traffic control operations of the Ministry of Defence reliant upon the Radar, has been submitted to, and approved in writing by, the Planning Authority in consultation with the Ministry of Defence.

The turbines shall not become operational until those measures within the Air Traffic Control Mitigation Scheme have been fully implemented and evidence of this has been submitted to and approved in writing by the Planning Authority, in consultation with the Ministry of Defence.

The development then to be operated fully in accordance with the approved Air Traffic Control Mitigation Scheme for the operational life of the wind farm or during the time that the Radar is retained as operational by the Ministry of Defence.

Reason: To secure mitigation of impacts on the primary surveillance radar at RAF Spadeadam Deadwater Fell and the air traffic control operations of the Ministry of Defence reliant upon the Radar.

## **Road Safety**

19. No development shall commence until a Traffic Management Plan (TMP) has been submitted to and approved in writing by the Planning Authority. The TMP to include:

- i. The detailed delivery route and vehicle numbers for all cars, HGV deliveries and abnormal loads associated with the development and measures to ensure that the specified routes are adhered to, including monitoring procedures and evidence of notification to Police Scotland;
- ii. Details of all ancillary works required to the public road network to facilitate deliveries, including swept path analysis drawings for agreed areas of concern along the route for the abnormal loads and any remedial measures, all signage and lining arrangements, a programme and timescales for implementation and reinstatement proposals after the development is complete and a programme and timescales for completion; the submission of planning applications may be subsequently necessary depending on the nature of the ancillary works identified;
- iii. Joint pre-construction and post construction surveys to be undertaken of all construction routes with the relevant staff from SBC and the applicant's representatives. An agreed method of repairing any damage caused to the public road network by traffic associated with the wind farm to be drawn up and all remedial works identified as a result of the construction period to be undertaken within an agreed timescale;
- iv. Details of tree or hedge removal along the route for the abnormal loads and a scheme for replacement planting and a timescale for its implementation and completion;

- v. Areas of the abnormal load route where the removal of street furniture, including lighting, is required and all temporary lighting measures required for the duration of the abnormal load movements;
- vi. Details of the proposed connection to the National Grid;
- vii. Name and contact details of a nominated person to whom any road safety issues can be referred;

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

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

### **Access Tracks**

20. No development shall commence until details of the position, length, width, materials and drainage of the new and upgraded tracks within the site have been submitted to and approved in writing by the Planning Authority. The tracks then to be installed in accordance with the approved details. Newly formed hard surfaces should be attenuated to existing greenfield runoff rates.  
Reason: To safeguard areas of ecological interest, watercourses and visual amenities and to ensure there is no increased flood risk to Ashkirk and other sensitive receptors.

21. No development shall commence until details of all watercourse crossings, culverts and alterations to existing crossings (position and design) have been submitted to and approved in writing by the Planning Authority, in consultation with SEPA. These should be designed to convey the 1 in 200 year flow. The development then to be completed in accordance with the approved details.  
Reason: To ensure that all construction operations are carried out in a manner that minimises their impact on the water environment and thereby minimising residual impacts on the River Tweed Special Area of Conservation.

### **Public Access**

22. No development shall commence until a scheme for enhancing public access within the site upon completion of the development has been submitted to and approved in writing by the Planning Authority. The Plan shall include (but not be limited to) the following:
  - i. timings of any intended diversion, closure or obstruction of any public right of way (note that these are likely to need a separate consent);
  - ii. measures for ensuring that paths kept open during development are safe and can be traversed without undue harm to the amenity of users;
  - iii. measures to ensure that users of the path network and accessible areas more generally are able to navigate through and adjacent to the site, including mapping and signage;
  - iv. any temporary installations such as gates, stiles and bridges and the duration of their installation;
  - v. proposals to restore original paths to an acceptable condition between construction and decommissioning and once full decommissioning has taken place;

- vi. proposals to enhance public access within and adjacent to the site during the lifetime of the development.

Reason: the development would interact with a range of public paths and accessible areas, with development effects causing changes that require careful management to ensure that the experience of users is not harmed unacceptably or, where it will be harmed, that the level and nature of harm is limited and controlled to minimise development effects. To ensure that access across the site is improved to provide access to areas of cultural heritage in the area of the site and to improve access to the countryside.

### **Private Water Supplies**

- 23. No development shall commence until a Private Water Supplies Risk Assessment has been submitted to and approved in writing by the Planning Authority, detailing all mitigation measures to be delivered to secure the quality, quantity and continuity of water supplies to properties which are served by private water supplies at the date of this consent and which may be affected by the development. The Risk Assessment shall include water quality sampling methods and shall specify abstraction points. The approved method statement shall thereafter be implemented in full.

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

### **Borrow Pits**

- 24. No development shall commence until a site specific scheme for the working and restoration of each borrow pit forming part of the development has been submitted to and approved in writing by the Planning Authority in consultation with SEPA. The scheme shall include:

- a) A detailed working method statement based on site survey information and ground investigations;
- b) Details of the handling of any overburden (including peat, soil and rock);
- c) Drainage, including measures to prevent surrounding areas of peatland, water dependant sensitive habitats and Ground Water Dependant Terrestrial Ecosystems (GWDTE) from drying out;
- d) A programme of implementation of the works described in the scheme; and
- e) Full details of the reinstatement, restoration and aftercare of the borrow pit(s) at the end of the construction period, to include topographic surveys of pre-construction profiles, and details of topographical surveys to be undertaken of the restored borrow pit profiles.

The approved scheme shall thereafter be implemented in full.

Reason: To ensure that excavation of materials from the borrow pit(s) is carried out in a manner that minimises the impact on road safety, amenity and the environment, and that the mitigation measures contained in the Environmental Statement accompanying the application, or as otherwise agreed, are fully implemented. To secure the restoration of borrow pit(s) at the end of the construction period.

### **Archaeology**

25. No development shall take place within the development site until the developer has secured the implementation of a programme of archaeological works in accordance with a Written Scheme of Investigation (WSI) which has been submitted by the applicant, agreed by Scottish Borders Council Archaeology Service, and approved by the Planning Authority. The WSI shall be formulated and implemented by a contracted archaeological organisation working to the standards of the Chartered Institute for Archaeologists (CIfA) approval of which shall be in writing by the Planning Authority. Thereafter the developer shall ensure that the programme of archaeological works is fully implemented and that all recording, recovery of archaeological resources within the development site, post-excavation assessment, reporting and dissemination of results is undertaken to the satisfaction of the Planning Authority in agreement with Scottish Borders Council Archaeology Service.

Reason: The site is within an area where development may damage or destroy archaeological remains, and it is therefore desirable to afford a reasonable opportunity to record the history of the site.

## Ecology

26. No development shall commence until an Ecological of Works (ECoW) has been appointed to carry out pre-construction ecological surveys, to inform a Construction Environmental Management Plan (CEMP) and to oversee compliance with the Construction Environment Management Plan, Species Protection Plan, Ecological Monitoring Plan and Decommissioning, Restoration and Aftercare Plan ("the ECoW works"). The terms of the appointment shall be submitted for the approval in writing by the Planning Authority in consultation with SEPA and SNH. The terms shall include the requirement to:

- a) Impose a duty to monitor compliance with the ecological and hydrological commitments provided in the Environmental Statement and other information lodged in support of the application, the Construction Environmental Management Plan and other plans; and
- b) Require the ECoW to report to the Company's nominated construction project manager, the Planning Authority and SEPA any incidences of non-compliance with the ECoW works.

No later than 18 months prior to decommissioning of the development or the expiration of this consent (whichever is the earlier), the developer shall submit details of the terms of appointment by the developer of an independent ECoW throughout the decommissioning, restoration and aftercare phases of the development to the planning authority for approval. The ECoW shall be appointed on the approved terms throughout the decommissioning, restoration and aftercare phases of the development.

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

27. No development to be commenced in relation to Turbine 3 until a survey and any necessary mitigation (including micro-siting as per Condition 4) has been submitted to, and approved by, the Planning Authority in liaison with SEPA, in relation to the potential impacts on Groundwater Dependent Terrestrial Ecosystems. Thereafter, the development to be carried out fully in accordance with the agreed details.



Reason: To ensure that all construction operations are carried out in a manner that minimises their impact on the water environment and thereby minimising residual impacts on connected water systems and that mitigation measures contained in the Environmental Statement accompanying the application, or as otherwise agreed, are fully implemented.

28. No development shall commence until a Construction Environment Management Plan (CEMP) has been submitted to and approved in writing by the Planning Authority, in consultation with SEPA. The CEMP shall include:

- a) Risk assessment of potentially damaging construction activities;
- b) Identification of “biodiversity protection zones”;
- c) Method Statements to avoid or reduce impacts during construction, to include the location and timing of sensitive works to avoid harm to biodiversity features, the times during construction when specialist ecologists need to be present on site to oversee works, include the use of protective fences, exclusion barriers and warning signs;
- d) A Drainage Management Plan including the impacts on, and treatment of, GWDTEs as identified in the Environmental Statement including the demarcation of “no development” areas and demonstration of how all surface and waste water arising during and after development will be managed and prevented from polluting any watercourses or sources.
- e) A Peat Management Plan
- f) A Site Waste Management Plan;
- g) A dust management plan
- h) A pollution and prevention control method statement including arrangements for the storage of fuel and oil on the site
- i) details of measures to be taken to prevent loose or deleterious material being deposited on the local road network including wheel cleaning and lorry sheeting facilities, and measures to clean the site entrances and the adjacent local road network;
- j) the construction or improvement of access tracks, turbines, construction compound, crane pads, turbine foundations and cable trenches
- k) soil storage and management
- l) temporary site illumination
- m) a felling and tree management plan
- n) post-construction restoration/ reinstatement of the working areas not required during the operation of the Development, including construction access tracks, borrow pits, construction compound and other construction areas. Wherever possible, reinstatement is to be achieved by the careful use of turfs removed prior to construction works. Details should include all seed mixes to be used for the reinstatement of vegetation;
- o) An Accident Management Plan;
- p) Noise mitigation and complaint procedures
- q) Responsible persons and lines of communication;
- r) The role and responsibilities on site of an Ecological Clerk of Works (ECoW).

The approved CEMP shall be implemented throughout the construction period and operational phase as appropriate, strictly in accordance with the approved details, unless otherwise agreed in writing by the Planning Authority in consultation with SEPA.

Reason: To ensure that all construction operations are carried out in a manner that minimises their impact on the water environment and thereby minimising residual impacts on the River Tweed SAC and that mitigation

measures contained in the Environmental Statement accompanying the application, or as otherwise agreed, are fully implemented.

29. No development shall commence until a Species Protection Plan (including supplementary surveys and mitigation measures for bats, otter, badger, red squirrel, breeding birds and reptiles as appropriate) has been submitted to and approved in writing by Planning Authority. Any works shall thereafter be carried out in accordance with the approved scheme.

Reason: To ensure that the species affected by the development are afforded suitable protection from the construction, operation and decommissioning of the development.

30. No development shall commence until a Habitat Management Plan, including measures to compensate for habitat loss and enhance existing habitats including blanket bog, wet modified bog, peat, acid grassland, marshy grassland, dry dwarf shrub heath, black grouse (including species management proposals), wetland habitat (as identified in the Environmental Statement), woodland habitats (including native broadleaves and scrub) and measures to enhance breeding wader habitat in suitable locations have been submitted to and approved in writing by the Planning Authority. Any works shall thereafter be carried out in accordance with the approved scheme.

Reason: To mitigate the loss of habitats as a result of the development.

31. No development shall commence until an ecological monitoring programme, including monitoring in years 1, 3, 5, 10 and 15 following construction, for Schedule 1 raptors, black grouse and breeding waders has been submitted to and approved in writing by the Planning Authority. This should also include proportionate post-construction monitoring of protected mammals (bats, otter, and badger as appropriate) and habitats. Any works shall thereafter be carried out in accordance with the approved scheme.

Reason: To ensure suitable procedures are in place to monitor the impacts of the development on ecological interests.

32. No development shall commence until a monitoring and mitigation plan for goshawk has been submitted to and approved in writing by the Planning Authority. Any works shall thereafter be carried out in accordance with the approved scheme.

Reason: To ensure that the species affected by the development are afforded suitable protection from the construction, operation and decommissioning of the development.

### **Decommissioning and Financial Guarantee**

33. The Development will be decommissioned and will cease to generate electricity by no later than the date falling twenty five years from the date of Final Commissioning. The total period for restoration of the site in accordance with this condition shall not exceed three years from the date of Final Decommissioning without prior written approval of the Planning Authority.

No development shall commence until a Decommissioning, Restoration and Aftercare Plan has been submitted to and approved in writing by the Planning

Authority in consultation with SEPA and Scottish Natural Heritage. The Plan shall detail measures for the decommissioning of the development, restoration and aftercare of the site and will include proposals for the removal of the above ground elements of the development, the treatment of ground surfaces, the management and timing of the works and environmental management provisions.

No later than 3 years prior to decommissioning of the development the Decommissioning, Restoration and Aftercare Plan to be revised and submitted to and approved in writing by the Planning Authority in consultation with SNH and SEPA. The revised Decommissioning, Restoration and Aftercare Plan will provide updated and detailed proposals for the removal of above ground elements of the development, the treatment of ground surfaces, the management and timing of the works and environment management provisions.

The development shall be decommissioned, site restored and aftercare thereafter undertaken in accordance with the approved Plan, unless otherwise agreed in writing in advance with the Planning Authority in consultation with SNH and SEPA. Any decommissioning works shall be carried out in accordance with the approved Plan.

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

34. No development shall commence until the developer/operator has delivered a bond or other form of financial guarantee in terms acceptable to the Planning Authority which secures the cost of performance of all decommissioning, restoration and aftercare obligations contained in condition 35 to the Planning Authority. The financial guarantee shall thereafter be maintained in favour of the Planning Authority until the date of completion of all restoration and aftercare obligations.

The value of the financial guarantee shall be determined by a suitably qualified independent professional as being sufficient to meet the costs of all decommissioning, restoration and aftercare obligations contained in condition 35. The value of the financial guarantee shall be reviewed by a suitably qualified independent professional no less than every five years and increased or decreased to take account of any variation in costs of compliance with restoration and aftercare obligations and best practice prevailing at the time of each review.

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

## **INFORMATIVES**

1. In respect of condition 17 the aviation lighting should either be Ministry of Defence accredited 25 candela omni-directional red aviation lighting or infrared warning lighting with an optimised flash pattern of 60 flashes per minute of 200ms to 500ms duration at the highest practicable point on the turbines. The turbines should be erected with this lighting installed.

2. In respect of Condition 20, SNH advise that the route of the floating access track where it impacts on the identified deep peat, be revised north-eastwards to avoid the area of deep peat.
3. In respect of Condition 21, SEPA advises that any culverts may be subject to CAR licensing and that works should follow the UK Forestry Standard for implementation of good pollution prevention measures.
4. In respect of Conditions 27 and 28, SEPA advise that when designing the drainage strategy, no SUDs or treatment ponds should be located on GWDTEs or fluvial wetlands. Any tracks must have suitable drainage which maintains hydrological connectivity and cut-off drains do not discharge dirty water to GWDTEs or fluvial wetlands. All tracks on areas of GWDTE should be semi-porous to maintain hydrological connectivity and must be non-alkaline in nature. Scottish Water advise that contractors should note they are working close to a drinking water catchment boundary and should ensure no pollution enters this catchment.

#### DRAWING NUMBERS

Figure 1.1	Site Location Plan
Figure 1.2	Site Context Plan
Figure 1.3	Site Layout Plan
Figure 2.1	Typical Turbine Elevation
Figure 2.2	Typical Turbine Foundation Details, Plans and Sections
Figure 2.3	Typical Crane Hardstanding Layout and Sections
Figure 2.4	Typical Road Sections and Cut/Fill Scenarios
Figure 2.5	Typical Culvert Plans and Sections
Figure 2.6	Typical Gate Details
Figure 2.7	Electrical Control Building and Compound Layout Plan
Figure 2.8	Electrical Control Building and Compound Elevations
Figure 2.9	Site Layout Plan with Environmental Constraints

#### **Approved by**

Name	Designation	Signature
Ian Aikman	Chief Planning Officer	

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

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

Name	Designation
Craig Miller	Principal Planning Officer



17/01255/FUL

Land West Of Whitslaid (Barrel Law)  
Selkirk

