

**SCOTTISH BORDERS COUNCIL**

**PLANNING AND BUILDING STANDARDS COMMITTEE**

**4 NOVEMBER 2019**

**THE ELECTRICITY ACT 1989 (SECTION 36C)**  
**THE ELECTRICITY GENERATION STATIONS (APPLICATIONS FOR VARIATION**  
**OF CONSENT) (SCOTLAND) REGULATIONS 2012**

**ITEM:** **REFERENCE NUMBER:** 19/01253/S36  
**OFFICER:** Mr Scott Shearer  
**WARD:** Mid Berwickshire  
**PROPOSAL:** Variation to height of turbine T16 from 125m to 145m blade to tip  
**SITE:** Land North Of Nether Monynut Cottage  
Cockburnspath  
**APPLICANT:** Community Windpower Ltd

**PLANNING PROCESSING AGREEMENT:**

A Planning Processing Agreement (PPA) has been agreed with the Energy Consent Unit (ECU) and the applicants for this application to be determined at the November meeting of the PBS Committee.

**PURPOSE OF REPORT**

To advise the Scottish Government of the response from Scottish Borders Council (SBC) on an application submitted under section 36C of the Electricity Act 1989 to vary the existing section 36 consent Aikengall Ila wind farm.

**PROCEDURE**

Members will be aware from previous Section 36 applications coming before this Committee that Scottish Borders Council (SBC) is a consultee as a 'relevant planning authority' for the purposes of this application process. The views of SBC will be passed to the Energy Consents Unit (ECU) at Scottish Government, the body responsible for processing and determining onshore Section 36 planning applications. The ECU advertises the application and carries out consultation with other interested bodies. There is, therefore, no need for SBC to undertake a tandem process although consultation has taken place with relevant specialists within the Council.

It should be noted that if permission is granted, the local authority (rather than the ECU) would become the relevant enforcement authority responsible for monitoring compliance with the terms of an approval and any conditions imposed thereon.

The application site extends across Scottish Borders Council and East Lothian Council administrative areas. All the wind turbines are located within the Scottish Borders. The ECU has sought the views of East Lothian Council as part of the application process.

## **SITE DESCRIPTION**

The application site covers the same area as that of the consented Aikengall Ila wind farm which is located within the Eastern Lammermuir Hills, straddling the boundary of the Scottish Borders and East Lothian. Development works have not yet commenced on site.

## **PROPOSED DEVELOPMENT**

Consent is sought to extend the tip height of Turbine 16 (T16) from 125m to 145m. No other changes are proposed with the turbine occupying the same location as currently consented and utilising the infrastructure from the consented scheme. This would mean that T16 would match the height of all other consented wind turbines at Aikengall Ila.

The application has been supported by an Environmental Report which revised the relevant sections of the original Environmental Impact Assessment (EIA) to consider the impact of the proposed variation. Annex 1 and 2 of the submitted Environmental Report include the draft changes to the description of the development and conditions of the deemed planning consents which would be varied if these proposals are agreeable.

A screening exercise has been carried out which concluded that the proposed development would not require an EIA.

## **PLANNING HISTORY**

Aikengall Ila wind farm was granted consent on 19th of October 2016 by the Scottish Ministers following a Public Local Inquiry after SBC and ELC objected to the proposals.

The consented development comprises of 19 turbines in total consisting of 18 turbines with a 145m tip height and a single turbine with a 125m tip height.

Development works have not yet commenced however the applicants have purified a number of suspensive pre-commencement planning conditions. A 5 year time scale to commence the development was imposed and so the consent remains implementable once all suspensive conditions are purified.

For additional background, Members should note that the original Aikengall Ila application sought consent for 27 turbines at varying tip heights of 145m, 125m and 110m. Through the course of that application the proposals were amended which resulted in 8 turbines being removed from the original scheme. T16 was the only turbine to remain at 125m with all other turbines at 145m to tip.

## **REPRESENTATION SUMMARY**

Third party representation are submitted to the ECU for their consideration. At the time of writing no representations have been received on the online portal.

## **DEVELOPMENT PLAN POLICIES:**

### **Scottish Borders Council Local Development Plan 2016:**

Policy PMD1 Sustainability

Policy PMD2	Quality Standards
Policy ED9	Renewable Energy Development
Policy HD3	Protection of Residential Amenity
Policy EP1	International Nature Conservation Sites and Protected Species
Policy EP3	Local Biodiversity
Policy EP5	Special Landscape Areas
Policy EP8	Archaeology
Policy EP15	Development Affecting the Water Environment
Policy IS2	Developer Contributions
Policy IS5	Protection of Access Routes
Policy IS8	Flooding
Policy IS9	Waste Water Treatment Standards and Sustainable Urban Drainage

## **OTHER PLANNING CONSIDERATIONS:**

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

- Renewable Energy (2018)
- Visibility Mapping for Windfarm Development (2003)
- Local Landscape Designations (2012)
- Ironside Farrar Study (2013) on Wind Energy Consultancy Landscape Capacity and Cumulative Impact

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

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

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

- PAN 51 Planning, Environmental Protection and Regulation
- PAN 1/2011 Planning and Noise

### **SNH Publications:**

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

### **Other Publications:**

- ETSU-R-97 - The Assessment and Rating of Noise from Wind Farms
- The Scottish Governments Onshore Wind Policy statement 2017
- Schedule 9 to the Electricity Act 1989

## **CONSULTATION RESPONSES:**

### **Scottish Borders Council Consultees**

**Access Officer:** No response received at the time of writing.

**Archaeology Officer:** No response received at the time of writing.

**Ecology Officer:** No response received at the time of writing.

**Environmental Health:** The figures used in the noise assessment are based on the candidate turbine specifications used in the original Aikengall IIa EIA. The noise figures quoted for this variation are different, this may be a typographical error and clarification should be sought. It is recommended that the proposed change will unlikely have a significant impact to the noise limits set at the receptor locations for the consented development within the Environmental report dated 5<sup>th</sup> Dec 2014. Suggest that a planning condition is attached which would require that a new noise assessment is carried out if the sound power level of the candidate turbine is greater than that used in the noise impact assessment.

**Landscape Architect:** No response received at the time of writing.

**Flood Risk and Coastal Management:** No objection

**Roads Planning Service:** No objection.

### **Statutory Consultees**

Statutory consultees are reported to the ECU and are available on the Government's planning portal. Apart from Scotways, no objections from any statutory consultees have been received. Scotways opposed the original development on the basis that inadequate information has been presented in respect of a path route passing through the site and this remains unchanged.

### **KEY PLANNING ISSUES:**

Whether a 20m increase to the tip height of T16 will cause unacceptable adverse landscape, visual or any other material planning impacts over and above the perceived impacts of the turbine already consented.

### **ASSESSMENT OF APPLICATION:**

#### **Planning Policy Principle**

The determination of the Scottish Ministers to grant consent for the development of Aikengall IIa at this site (which included the erection of a 125m high turbine in the position of T16) is a significant material consideration in the determination of this application. The original S36 consent remains implementable regardless of any decision on this application.

This variation does not seek permission to increase the number of turbines or change their location. It only seeks permission to increase the height of a single turbine (T16) which was approved at a height of 125m to tip. The proposed taller turbine would not result in any material changes to the infrastructure associated with approved T16.

Members will note the planning history associated with this proposal and will be aware that the approved turbine (T16) measures 125m to tip height. This formed part of a much larger scheme consisting of 27 turbines ranging from 110m to 145m but was amended through the application process to 19 turbines, removing all 110m high turbines and all but one (T16) of the 125m high turbines. It is worth noting that T16 was not reduced or increased in height during the processing of the earlier application and was not restricted as part of any condition attached to the extant consent. T16 was approved at a height of 125m as originally submitted.

The increased height of T16 would match the height of all other turbines which form part of the Aikengall Ila approval. The site forms part of a wider wind farm cluster within the Lammermuir Hills Special Landscape Area (SLA) where consent currently exists for up to 145 commercial turbines with heights ranging between 100 – 145m across the combined Aikengall/Crystal Rig array.

The extant permission and presence of the wider windfarm array has established the principle for renewable wind development for large wind turbines up to the height proposed by this variation within this part of the Lammermuir Hills Special Landscape Area. Given the wider context, previous approvals and constructed windfarms, the erection of a turbine measuring 145m would not conflict with the principal aims of Policy ED9 or EP5.

### **Landscape and Visual Impact**

There is undoubtedly a landscape and visual impact arising from both the permitted and proposed schemes. Nevertheless the crucial point for assessment, given the fact that a valid permission exists on this site, must be the visual impact of an additional 20m on a single turbine within the wider environment. To undertake this assessment the applicants have provided supporting information in the form of visibility plans, wirelines, photomontages and elevations which compare the impact of the two turbine designs and the increase in tip height.

The elevational drawing submitted shows that in plan form the variation does not appear to be significant.

Figure 6.2 is a comparative ZTV which identified in red where the increase in the height of T16 would give rise to additional visibility of the Aikengall Ila development. The ZTV suggests that there is only a very small area of new visibility on minor roads to the west of Hume. This new receptor is some 25km from the development and is too distant to be meaningfully affected by this proposal. Clearly there remains significant visibility of the Aikengall Ila wind farm towards the south and south east, importantly the increase in the height of T16 does not increase the visibility of the consented scheme within the surrounding landscape.

The analysis of the wirelines and photomontages from the selected viewpoints has unsurprisingly revealed that the proposed 20m increase to the height of T16 means that this turbine sits taller than the consented T16. The impacts from some key viewpoints have been considered below;

- Viewpoint 3 – immediately to the south of the windfarm. The proposal sits up more awkwardly on the edge of the array than the consented 125m turbine. T14 remains dominant in this view.
- Viewpoints 6 and 11 – represents views from the east. The array is viewed in quite a full context and the impact of the proposal is marginal with the increased tip height not obvious alongside so many other turbines.
- Viewpoint 7 – is from the Southern Upland Way. The positioning of T16 is unfortunate as it is seen in front of T15. The variation however will remain lower than T15 which occupies higher ground. The crossover of the blade sweeps of these two turbines could appear awkward, however that was already an issue with the existing approval which is replicated elsewhere within this extensive array.
- Viewpoint 20 – is from the A6112 which is a sensitive receptor to the south east. T16 is located in the foreground of the array when viewing towards the Lammermuir ridge. From this location the taller turbine actually integrates better

into the wider array without appearing dominating. There is a similar impact from Cockburn Law at Viewpoint 18.

- Towards the West/South West, viewpoints 22, 25 and 27. The array is seen in a full context with T16 occupying a location towards the edge. From viewpoint 25 there is some blade crossover as per viewpoint 27. The taller turbine does not appear as a prominent outlier.

The viewpoint analysis confirms that where the development is visible, it is seen as part of the extensive Crystal Rig/Aikengall wind farm array. The proposed 20m increase to the height of T16 is not found to dominate any views or significantly affect the layout of the wider array. Furthermore, the increase to the height of T16 poses no new cumulative impacts with any other existing or proposed windfarm developments.

Overall the proposed variation is judged to have a negligible effect which does not give rise to any unacceptable landscape or visual impacts.

## **Residential Amenity**

### Visual Amenity

Five properties within the Scottish Borders are potentially affected by the increase in tip height of T16. These properties are;

- Middle Monynut/Middle Monynut Cottage
- The Star (Shepherds Cottage) Dunglass Common
- Paitshill Farm/Paitshill Cottage
- Luckieshiel Farmhouse
- The Cottage, Bushelhill

These properties will be visually affected by the consented Aikengall IIa development and other adjoining windfarms. Wirelines have been provided to illustrate the impact of the proposed change from each of the five properties where T16 does appear taller. Nevertheless from these properties T16 is not viewed in isolation and instead it appears alongside other larger turbines. The increase in tip height of T16 does not result in this turbine dominating the visual amenity of any of these properties.

### Noise

The approved scheme was subject to conditions to limit the noise levels in order to avoid adverse impacts on the amenity of residential properties and also set procedures in the event of a statutory noise complaint.

The noise assessment carried out during the original application modelled the noise from both the 145m and 125m turbines. Based on the candidate turbines used, this modelling found that despite being taller, the 145m turbine was actually quieter than the smaller 125m model. This would suggest that this variation would reduce the noise output from this wind farm.

An updated noise assessment has been submitted based on the original turbine models. The Council's Noise Consultant has identified that there may be a discrepancy in the submitted calculations and this has been confirmed by the applicant's noise consultants. Despite this issue, the Council's Noise Consultant concluded a proposed change to T16 would not have any significant impact in the overall noise emission at the receptor locations. The noise limits set by the condition attached to the original

approval can therefore remain in place. The suggestion by the Councils Noise Consultation to seek for further noise assessment if the installed turbines have a greater sound power is not necessary as it remains the responsibility of the developer to ensure that they operate within the limits previously imposed.

### Residential Amenity Conclusion

When assessed against the potential impact of the consented windfarm, the anticipated visual impact of the increase in height as well as the noise levels likely to be produced, the proposed increase in turbine height is not judged to adversely impact on the amenity of any residential properties. The proposal therefore complies with Policy HD3 of the LDP.

### **Aviation**

Policy ED9 seeks to ensure that wind farm developments must consider their impact on aviation and defence infrastructure. The increase in the height of a turbine could potentially impact both of these interests.

Members will note from the ECU portal that both NATS and the MOD have not raised any objections. The revised development poses no aviation or defence safety issues. The conditions set out in the schedule to the original consent which seek to mitigate the impact of the wind farm on aviation safety and defence interests are unaffected by the proposed increase in turbine height.

### **Ornithology**

The extension of the tip height of T16 has the potential to affect ornithology primarily by increasing the risk of collision. The original ornithology assessment which was undertaken for the Aikengall IIa development was based on the larger scheme of 27 turbines. At that stage relevant consultees did not oppose the 27 turbine scheme on ornithology grounds. Ultimately the consented scheme further reduced the impact on ornithology as the number of turbines was reduced to 19.

Although no comment has been provided by the Council's Ecologist, the RSPB have advised the ECU of ornithology impacts. While they have considered that the additional information is not as robust as it could be, ultimately a 20m height increase is not judged to have any significant impacts. Based on this advice and the original ornithology assessment for a larger development it is recommended that a 20m tip height increase to T16 is not found to have any significant impacts on ornithological interests.

### **Suggested Variations**

Appendix A of the submitted Environmental Report, identifies proposed variations which are required to the consent issued for Aikengall IIa should consent be granted for this proposal. This would require variation to the following parts;

- Description of the Development
- Condition 8 – Implementation in accordance with approved plans and requirements of this permission.
- Condition 9 - Design and operation of the wind turbines

The variations proposed to each of the above are judged to be suitable and will continue to adequately control the increase of the tip height of T16 to 145m. If Members are minded to offer no objections to this proposal it is recommended that this is subject to the imposition of the proposed variations noted in Annex A.

No other variations would be required if this amendment is accepted.

### **Other Matters**

The screening opinion which was issued by the Scottish Government, removed the need for any other relevant sections of the original EIA to be updated as a result of this proposed variation.

The impact of an increase in the tip height of T16 by a further 20m has been fully considered and assessed against the Council's development plan.

Provided all relevant conditions attached to the original Aikengall IIa approval, it is considered that the proposed increase in height of one turbine (T16) will not result in unacceptable adverse impacts on the landscape and will comply with the relevant provisions of the development plan. The request to vary the original Section 36 proposals is not significant and will have limited, if any, landscape or visual impacts.

### **CONCLUSION**

It is considered that the impacts arising from the 20m increase in height of T16 would not be significant. The proposed development is therefore consistent with the Development Plan and does not raise any other material considerations that would justify departure from the Development Plan.

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

That the Council indicate to the Scottish Government that it does not object to application 19/01253/S36 to vary the height of turbine T16 from 125m to 145m blade to tip, subject to the imposition of the variations proposed within Annex A of the Environmental Report dated June 2019 and the imposition of the relevant conditions and informative notes of the original consent which remain necessary to adequately control this development.

### DRAWING NUMBERS

<b>Drawing Number</b>	<b>Date Received</b>	<b>Description</b>
Figure 2	21.08.2019	Regional Location
Figure 3	21.08.2019	Site Plan
044-191016-7575b	18.10.2019	Elevations

**Approved by**

Name	Designation	Signature
Ian Aikman	Chief Planning and Housing Officer	

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

**Author(s)**

Name	Designation
Scott Shearer	Peripatetic Planning Officer



19/01253/S36

Land North Of  
Nether Monynut Cottage  
Cockburnspath

