

**SCOTTISH BORDERS COUNCIL**

**PLANNING AND BUILDING STANDARDS COMMITTEE**

**1 FEBRUARY 2021**

**THE ELECTRICITY ACT 1989 (SECTION 36C)**  
**THE ELECTRICITY GENERATING STATIONS (APPLICATIONS FOR VARIATION**  
**OF CONSENT) (SCOTLAND) REGULATIONS 2013**

**ITEM:** **REFERENCE NUMBER:** 20/00789/S36

**OFFICER:** Mr Craig Miller  
**WARD:** Tweeddale West  
**PROPOSAL:** Variation to operating life from 25-30 years and clarification on drawing listed as Annex E on consent  
**SITE:** Whitelaw Brae Wind Farm, Fruid, Tweedsmuir  
**APPLICANT:** Whitelaw Brae Wind Farm Limited

**PLANNING PROCESSING AGREEMENT:**

The timescale for response to the Energy Consent Unit (ECU) is by 11 February 2021.

**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 and section 57 of the Town and Country Planning (Scotland) Act 1997 to vary the deemed planning permission at Whitelaw Brae Wind Farm, Fruid, Tweedsmuir.

**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.

**SCHEDULE 9 OF THE ELECTRICITY ACT 1989**

Schedule 9 of the Electricity Act 1989 imposes specific obligations on electricity companies in respect of the environment. They:

- (a) shall have regard to the desirability of preserving natural beauty, of conserving flora, fauna and geological or physiographical features of special interest and of

protecting sites, buildings and objects of architectural, historic or archaeological interest; and

- (b) shall do what he reasonably can to mitigate any effect which the proposals would have on the natural beauty of the countryside or on any such flora, fauna, features, sites, buildings or objects.

In determining the variation against the provisions of the Development Plan, there must also be consideration of the requirements of Schedule 9 of the Electricity Act. This is particularly so for the ECU as the decision-making body on the variation request.

## **SITE DESCRIPTION**

The application site covers the same area as that of the consented Whitelaw Brae wind farm which is located 3km south of Tweedsmuir and directly west of the Fruid Reservoir. Development works have not yet commenced on site.

## **PLANNING HISTORY**

Whitelaw Brae Wind Farm was granted consent on 7 December 2017 by the Scottish Ministers following a Public Local Inquiry after SBC objected to the proposals.

The consented development comprises of 14 turbines with a tip height of 133.5m and hub height of 80m, along with ancillary works and buildings including tracks, foundations, substation, battery storage, borrow pits and compounds.

Development works have not yet commenced but the applicants have begun to purify a number of suspensive pre-commencement planning conditions with the Council. A five year timescale to commence the development was imposed, therefore, the consent remains implementable once all suspensive conditions are purified.

At the October meeting of the Planning and Building Standards Committee, Members considered the application submitted under Section 36C of the Electricity Act 1989 to make the following variations:

1. Extension of the 25 year operating life of the development to 30 years (Conditions 1 and 24 of the S36 consent)
2. Increase in tip height of all turbines from 133.5 to 136.5m (Condition 6 of the deemed planning permission)
3. Condition 5 of the deemed planning permission referred to Annex E listing the approved drawings but no Annex E was attached. Variation suggests cross-referring Annex E to Figure FEI 3.1 of the original scheme showing the site layout

Members raised no objections to the S36C application and this was relayed to the ECU, along with the recommendation to adjust Condition 15 to specifically mention Schedule 1A species.

The Section 36C application has not yet been granted by the ECU and the applicant has now written to the ECU to withdraw item 2 above, the tip height increase. The application now constitutes variation for only items 1 and 3 above. Even with the tip height request now omitted, the applicant states that *“The five year extension to the life of the windfarm would contribute to an increase in the energy yield over the life of the windfarm”*. The original Committee Report is attached to this report as Appendix

1 and Members are asked to pay full regard to it, with the exception of any sections and assessment relating to tip height increase.

The variation makes it clear that no other elements of the scheme are changing. The turbines are in exactly the same positions and all ancillary elements remain as originally proposed.

The application for variation continues to be supported by:

- A supporting letter with annexes
- Planning Statement
- EIA Screening Report

A screening exercise undertaken by the ECU, after consultation with the Council, concluded that the proposed development variation would not require an EIA.

### **Ecology and ornithology**

In the previous Committee Report, it was noted that that further information was now available in relation to Schedule 1A species at the site and that further Schedule 1A surveys were now necessary. In the circumstances, it was suggested that there was justification to recommend to the ECU that they amend Condition 15 appropriately, should the variation request be granted. This is still justified given the change in the baseline position and new information on Schedule 1 species, despite the removal of the tip height increase request from the application by the applicant. Subject to this, there continues to be no ecological or ornithological reasons to oppose the variation request and, thus, the scheme is still compliant with Policy ED9 and Schedule 9 of the Electricity Act.

### **CONCLUSION**

Provided all the previously imposed conditions are still applied to the variation, including an adjustment to Condition 15 to include Schedule 1A species, it is considered that the impacts arising from a five year extension to the wind farm operating life 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. It would also be in accordance with Schedule 9 of the Electricity Act through the identification of impacts on the natural environment and proposed mitigation.

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

That the Council indicate to the Scottish Government that it does not object to the application to extend their operating life of the wind farm to 30 years and refer to the original FEI Site Layout as Annex E of the S36 consent, subject to the imposition of the relevant conditions and informative notes of the original consent which remain necessary to adequately control this development, including an adjustment to Condition 15 to include Schedule 1A species.

## DRAWING NUMBERS

<b>Drawing Number</b>	<b>Date Received</b>	<b>Description</b>
Figure 1.1	17.07.2020	Site Location Plan
Figure 1.2	17.07.2020	Application Site Boundary
Figure 3.1	17.07.2020	Proposed Site Layout

## **Approved by**

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

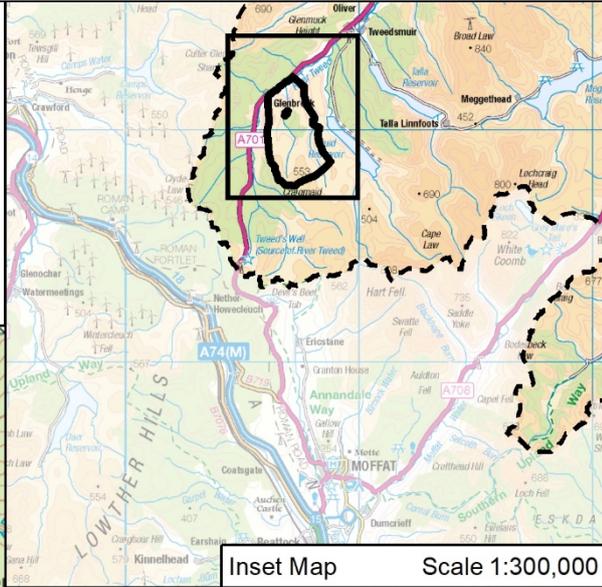
## **Author(s)**

<b>Name</b>	<b>Designation</b>
Craig Miller	Principal Planning Officer



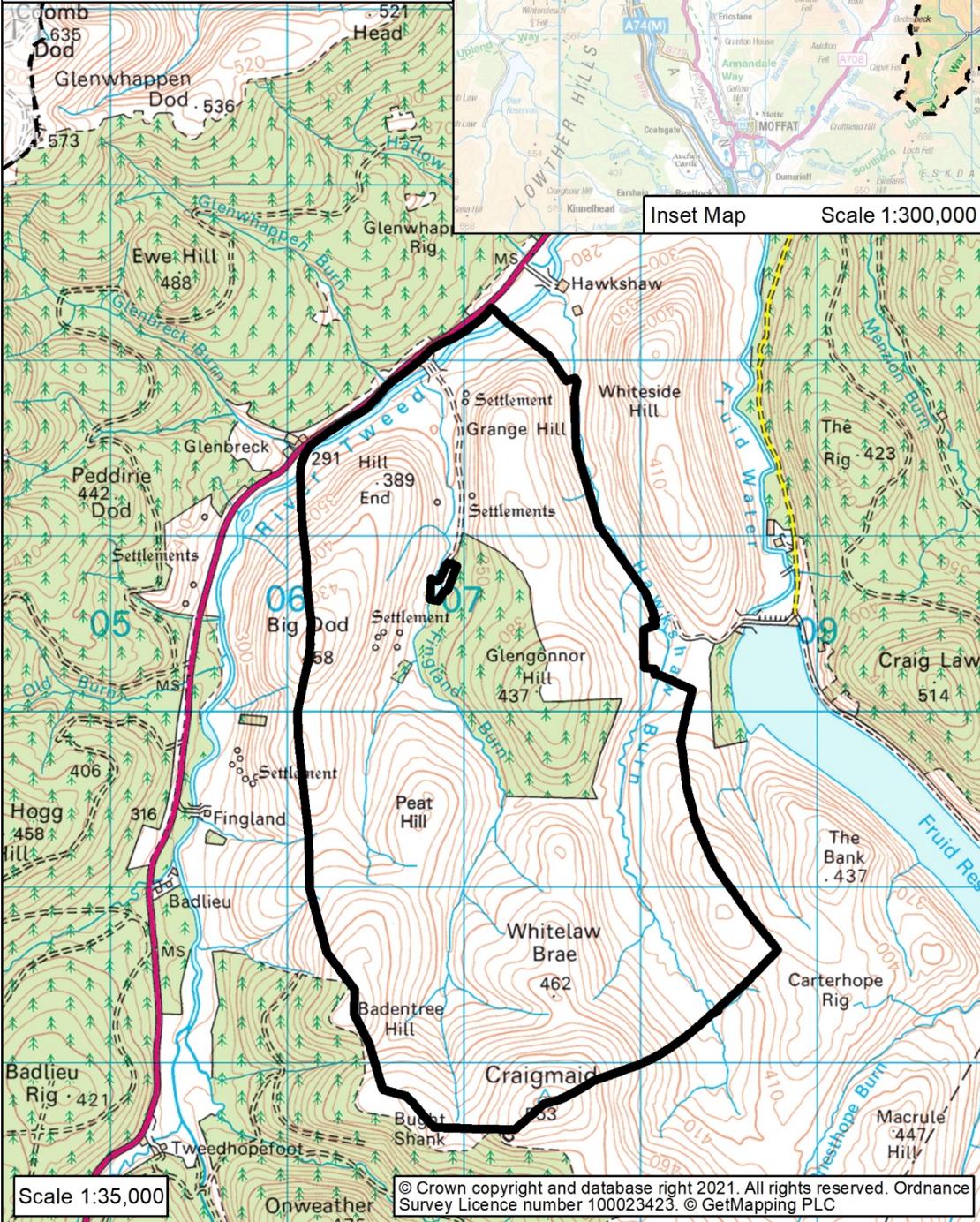
20/00789/S36

(Whitelaw Brae Wind Farm)  
Land South East Of Glenbreck House  
Tweedsmuir



Inset Map

Scale 1:300,000



Scale 1:35,000

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