

**SCOTTISH BORDERS COUNCIL**  
**PLANNING AND BUILDING STANDARDS COMMITTEE**  
**1 MARCH 2021**  
**APPLICATION FOR PLANNING PERMISSION**

**ITEM:** **REFERENCE NUMBER:** 18/01456/FUL

**OFFICER:** Craig Miller  
**WARD:** Hawick and Hermitage  
**PROPOSAL:** Variations of Conditions 1 and 14 of planning consent 13/00789/FUL for an extension to time to initiate development and to allow commencement prior to approval of an ATC Radar Mitigation Scheme

**SITE:** Land North East and North West of Farmhouse, Braidlie, Hawick

**APPLICANT:** Duncan Taylor per Energiekontor  
**AGENT:** None

**SITE DESCRIPTION**

The site is situated on grazed upland grassland just north of Hermitage Castle in Liddesdale. It is situated adjacent to Braidlie Burn, a small watercourse which runs southwards from Starcleuch Edge and Greatmoor Hill to the Hermitage Water. The core of the development would be north-west of Hermitage Hill, which itself forms the northerly backdrop to Hermitage Castle, a well-known heritage site owned and managed by Historic Environment Scotland.

The village of Hermitage, including its castle is situated a little over 2km to the south-east of the nearest turbine. Newcastle lies just less than 10km to the south, whereas the outskirts of Hawick are around 13km to the north of the nearest turbine.

The site lies west of (and would be accessed from) the B6399 road that connects Newcastle to Hawick; to the south is situated the valley road of the Hermitage Water, which connects Hermitage village to the A7 south of Moss paul and which passes Hermitage Castle. The access is proposed from near Whitrope, a little north of the Whitrope Heritage Centre.

Broadly to the north, north-east and east forestry plantations occupy a large area of the landscape. To the west and south are more open moorland/fells akin to the site itself.

The authority boundary with Dumfries and Galloway is situated around 5km west of the nearest turbines, whereas the national boundary with England and the counties of Northumberland and Cumbria are within 11km and 13km respectively, to the south-east.

The site is not subject to any formal landscape designations. The nearest designated landscape is the Langholm Hills Regional Scenic Area, within Dumfries and Galloway, approximately 5km west and south-west of the turbine group.

Within the Borders the nearest landscape designation is the Teviot Valleys Special Landscape Area, which is situated approximately 15km north-east of the nearest turbine.

## PROPOSED DEVELOPMENT

The application is submitted under Section 42 of the Town and Country Planning (Scotland) Act 1997 as amended to seek an extension of time in order to commence the development and to allow commencement before approval of an ATC Radar Mitigation Scheme. The extension sought is another three year period as per the standard commencement time period.

The development in question relates to that granted planning consent upon appeal on 9 June 2016, under application reference 13/00789/FUL. This constituted a wind farm comprising of 9 turbines and associated infrastructure for an initial period of 25 years. The development would have a maximum generating capacity of 22.5MW. 6 of the turbines would have a maximum blade tip height of 125m and a hub height of 80m (blade length = 45m), whereas the remainder T1, T2 and T4 would have a maximum tip height of 110m and a hub height of 65m. In addition to the turbines and their foundations, the following would be implemented:

- hardstanding area for crane (crane pads) per turbine
- electrical transformer and related switchgear per turbine
- trenches for electricity cables to be undergrounded
- control building and compound
- substation and compound
- a lattice tower wind speed measuring mast
- a temporary construction compound
- 2 borrow pits for the excavation of hardcore material to be used in track/pad construction
- 2 laydown areas for depositing of components during construction
- an on-site batching plant for preparation of material excavated from borrow pits
- a total of 8 watercourse crossings
- upgraded access off the B6399 and an estimated 10.446km of site access track, the majority of which is new track

The locations of those above ground items were shown on the submitted Revised Site Layout plan ref. A2.1 within the 2014 Further Environmental Information to the Environmental Statement.

## PLANNING HISTORY

Planning application 13/00789/FUL was refused by the Council on 29 June 2015 for the following reasons:

*"1. The proposed development would be contrary to Policies G1 and D4 of the Scottish Borders 2011 Local Plan, in that the development would unacceptably harm the Borders landscape due to:*

- (i) overridingly adverse impacts on landscape character arising from placement of turbines and infrastructure on a sensitive and distinct landscape with grandeur, historical, remoteness and wilderness qualities, which can be observed and experienced from a range of public paths and recreational access areas;*

- (ii) *the introduction of an array of large commercial turbines into a locality which is significantly remote from main settlements and road networks and where no logical reference can be made to any other similar man-made interventions (including noticeable electrical infrastructure) or settlement, which is characterised by simplistic landforms with which the development does not harmonise; thereby the development would appear as an incongruous and anachronistic new item; and*
- (iii) *the introduction of a medium-sized commercial wind farm in an area which is presently free from wind farm development and which provides a spatial separation between areas occupied by wind farms in Borders.*

2. *The development conflicts with Policy D4 of the Consolidated Scottish Borders 2011 Local Plan, in that by virtue of its adverse impact on:*

- (i) *the ability of National Air Traffic Services to safely manage en-route non-military air traffic due to impacts on the Great Dun Fell radar serving Prestwick Airport; it would be incompatible with national objectives relating to protection of public safety at a UK level and the obligations set out in international treaties.”*

The applicant appealed to the Scottish Government against this refusal and a Reporter granted planning permission by Decision Letter dated 9 June 2016, subject to 27 Conditions and three Informatives.

In 2018, an application was submitted under Section 42 of the Act to vary Condition 1 and seek a further three year commencement period (18/01251/FUL). The reasons why an extension was sought were given in submissions from the applicant, as follows:

*“The aviation solution for Windy Edge is linked to and contingent on the rollout of ‘Project Marshall’, which is a large contract run by the MOD to replace its existing fleet of radars across the UK. Essentially the MOD’s old Watchman radars are to be replaced by new Thales radars. The radars at Spadeadam are some of the first in the UK to benefit from the upgrade, but are not yet fully commissioned. Both of the Spadeadam air traffic control radars (Berry Hill and Deadwater Fell) have coverage above Windy Edge.*

*The MOD wishes the aviation solution for Windy Edge to utilise the new Thales radars so that it is future-proofed, therefore agreement of a mitigation solution for Windy Edge has been delayed until such time as the radars are in place and fully operational. This process has taken longer than envisaged at the time the planning application was determined.*

*Once commissioned, the new Thales radars will require further configuring to mitigate Windy Edge. Specifically, the mitigation solution for Windy Edge will involve blanking coverage of the turbines from the Deadwater Fell radar and infilling with the Berry Hill radar. We believe this is an eminently viable radar mitigation solution, and one which would involve the following:*

- *The new radars being commissioned;*
- *A feasibility study undertaken to trial the blank and infill; and*
- *MOD accepting the findings and agreeing the technical solution.*

*You will see this is a process which would be challenging to conclude within our implementation time limit, in particular as it is linked to the rollout of a large MOD radar replacement programme across the whole of the UK.”*

The S42 application was presented to the Planning and Building Standards Committee in December 2018 and approved, thereby extending the original consent to 10 December 2021. Given the length of time that has passed since that application was considered by the Committee, this report summarises the issues again over time extension rather than referring back to the earlier report.

## **Current S42 Application**

This subsequent S42 application was submitted soon after the above application and has taken longer to process as it has involved more complex issues and matters, including an initial request to vary two other Conditions, both now having been withdrawn and not featuring in the application now presented to Members. As they no longer relate to the application but feature prominently in the various consultation replies and third party representations. Members should have no regard to those original S42 requests nor to the comments pertaining to the requests.

Those withdrawn requests were as follows:

### Variation of Condition 3 to increase the tip heights of six of the turbines from 125m tip height to 149.9m.

This element was withdrawn following implications from legal proceedings relating to a case in Wales which ultimately stated that a variation of condition that changed what was described as the development on the consent notice, was invalid and a new full planning application would be needed. As the tip heights were stated not only in Condition 3 of the original consent for Windy Edge, but also within the description of development on the consent, it was accepted that the decision in Wales related to very similar planning legislation in Scotland and equally applied. Consequently, the applicant was informed that the S42 request could not be considered or determined and subsequently withdrew that request from the application. The applicant then made a subsequent request for a “non-material variation” to remove the tip heights from the original consent description but the Council denied the request, considering that the purpose of “non-material variations” was not to amend or alter the description and, particularly, any material part of that description such as tip height.

### Variation of Condition 4 to increase the micrositing allowance from 50m to 100m.

This element was withdrawn after discussion over wording of a revised Condition did not reach any agreement and outstanding concerns were not addressed. There were a number of concerns over the micrositing impacts, including from statutory consultees such as SEPA, SNH, Historic Environment Scotland and Community Councils, as well as from Council Officers. The applicant did not accept a revision to Condition 4 suggested by the Council which would have allowed up to 100m micrositing only if submitted to, and approved by, the Council under Condition 4.

The application must, therefore, be solely considered and determined on the remaining two requests to vary Conditions 1 and 14. As the requests for tip height increase and micrositing have been withdrawn, the changed locations of the turbines described in Table 3.1 of Volume 1 of the Supplementary Environmental Information are similarly no longer considered part of the request

Condition 1 – although already approved separately until 10 December 2021 under S42 application 18/01251/FUL, consent for a three year extension to the commencement of development period of the original consent is also sought with this S42 application. The applicant’s reasoning for this request had already been explained

in detail in the Supporting Statement to 18/01251/FUL and equally pertains to the current application. There is no prohibition on submitting two applications with the same request, given that the current application also initially made three additional requests before being narrowed to just one additional request.

That additional request relates to Condition 14 which is a suspensive condition, worded to ensure that no development is commenced until an Air Traffic Control (ATC) Radar Mitigation Scheme is submitted to, and approved by, the Council. The Council would liaise with the MOD on the Scheme which should be aimed at mitigating the impacts of the turbines on the ATC Radar at RAF Spadeadam. The S42 application seeks to change the wording of this Condition to allow development to commence but not to allow any part of any turbine above ground until the Mitigation Scheme is submitted and approved. This would allow for access tracks, site preparation, foundations and concrete bases etc.

## **APPLICANTS' SUPPORTING INFORMATION**

- Supplementary Environmental Information Volume 1: Written Text
- Supplementary Environmental Information Volume 2: Figures

The vast majority of the content of Volumes 1 and 2 relate to the two Conditions on micrositing and tip height that were initially proposed for variation and required further environmental information to demonstrate potential impacts. All such material should now be disregarded and the S42 application should be considered only on the basis of commencement time extension and changed timing of the ATC Radar Mitigation Scheme submission on the consented turbines, as granted within the appeal decision.

## **CONSULTATION RESPONSES:**

Whilst there were a number of consultations undertaken and responses received, many consultees were reacting to the request to change the two Conditions that have now been withdrawn. Members, if they wish to, can view the full details of the consultation replies on the Public Access file. All that is summarised below, however, are the responses from those consultees that commented specifically on Conditions 1 or 14, the only comments relevant to a decision on the S42 application as now presented.

Ministry of Defence – no concerns with variations of Condition 1 or Condition 14 and accepts the revised wording of the Conditions. Confirms that Thales radars now in place at Spadeadam.

Upper Liddesdale & Hermitage Community Council – objects to the revision to Condition 14 which would allow roads, ancillary buildings, concrete bases etc. to be carried out and stay in place for however long it takes to find an aviation solution for the Spadeadam Radar. Considers the suggested additional conditions relating to the restoration bond and decommissioning should no turbines ever be erected but maintains objection as environmental damage will have been done

Newcastleton and District Community Council – Objects to the revision to Condition 14 as it would allow all ground works to be carried out and remain in perpetuity if a radar mitigation solution is not found, increasing impacts on ecology and flood risk.

Southdean Community Council – The request to vary Condition 1 is superfluous given that consent was already granted under 18/01251/FUL. Objects to the variation of Condition 14 as there would be a negative community impact over a potentially long period until a mitigation scheme is approved.

Hobkirk Community Council – Objects to variation of Condition 14. Concerned about agreeing to changes to conditions that arose after extensive planning process. Condition 1 extension of time commencement is reasonable and justified but believes Condition 14 is presumptuous without justification, putting pressure on Air Traffic Control to find a solution. Concerned that if there is no solution in reasonable timescale, development could remain in the ground and there is a risk of the developer abandoning the project.

## **REPRESENTATION SUMMARY**

Whilst there were seven representations received, many were reacting to the request to change the two Conditions that have now been withdrawn. Members, if they wish to, can view the full details of the representations on the Public Access file. All that is summarised below, however, is a summary of the main comments or objections from four respondents that commented specifically on Conditions 1 or 14, the only comments relevant to a decision on the S42 application as now presented.

- Section 42 applications are an unsatisfactory and inappropriate way to amend approved schemes rather than submission of full applications.
- The Committee should re-examine the entire scheme against current Policies and guidance.
- Queries the applicant's claims that the current scheme is uneconomic in seeking the variations.
- Developer was aware of the conditions when purchasing the scheme
- The developer has had enough time to start the development without further extension to the commencement time period
- No justification to start the development before the MOD consent to a Radar Mitigation Scheme
- No guarantee of agreement by the MOD in a reasonable timescale, resulting in construction impacts and damage to the environment on an open-ended basis.
- Part commenced development may prejudice future planning decisions

## **DEVELOPMENT PLAN POLICIES:**

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

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

### **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
- IS9: Waste Water Treatment Standards and Sustainable Urban Drainage

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

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

- Renewable Energy 2018
- 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 2013
- Onshore Wind Turbines – Planning Advice 2014
- COP21 UN 2015 (following Heathrow Runway decision)
- Climate Change Plan 2018
- Onshore Wind Policy Statement 2017
- Scottish Energy Strategy 2017
- Climate Change (Emissions Reduction Targets) (Scotland) Bill 2019
- The Programme for Government 2019
- UN Gap Report 2019
- Committee on Climate Change (CCC) Report 2019 and annual report 2020
- UK Net Zero Target 2019
- Covid-19 Guidance including Chief Planner's letter, CCC advice and Advisory Group on economic recovery

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

- Circular 3/2011 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 75 Planning for Transport

- PAN 81 Community Engagement Planning with People
- 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:**

- Justification for time extension
- Changes in Policy or other material considerations since consent was granted
- Advice from the MOD on timing of development in relation to the ATC Radar Mitigation Scheme

**ASSESSMENT OF APPLICATION:**

**Existing consent**

Whilst the Council had refused planning permission for this development for the reasons previously mentioned, the decision was successfully appealed to the Scottish Government and planning consent was issued on 9 June 2016. This is a significant material consideration and, despite some third party representations, should outweigh any ability of the Council to justify re-examination of the decision unless Policy or other material considerations have significantly changed. The consent was subject to a three year commencement period (Condition 1) and, subject to compliance with the other conditions, could have originally been commenced by 9 June 2019. As previously mentioned, a Section 42 consent was subsequently granted at Committee in December 2018 extending the consent to 10 December this year.

A Section 42 application for variation of condition does not alter the original consent which will remain in place. Should this variation of Condition 1 be granted again (by re-imposing it with a new date), then it will be necessary to re-attach all conditions as per the existing planning consent and there would effectively then be two extant versions of the consent, one expiring this year and the other lasting for another three years in terms of commencement ability.

The application should only be assessed against three main matters:

- The justification for the time extension
- Changes of Policy or other material significance since consent was granted
- The timing of commencement of development in relation to the ATC Radar Mitigation Scheme

### **Justification for the time extension**

In the Supporting Statement accompanying 18/01251/FUL, the applicant states that the original site owner was Windy Edge Wind Farm Limited who obtained the planning consent upon appeal in June 2016. There is no detailed information on when the applicant acquired the site except that it was recent to the September 2018 date of the Supporting Statement. It would, therefore, be reasonable to assume that the new site owner initially had less than a year to commence development once all suspensive conditions had been addressed and discharged.

The Supporting Statement and additional justification explain that the greatest concerns relate to Conditions 14 and 15, relating to the need for radar mitigation schemes to be agreed. The applicant states that these can be complex and can involve “extensive contractual agreements”. Both Conditions are suspensive and involve mitigation schemes that would need to be verified as acceptable to the Council from both the MOD and NATS. Whilst Condition 15 would allow some site preparation work before such a scheme was submitted and approved, Condition 14 would not allow any site commencement until a scheme was approved.

The applicant explains in more detail the difficulties and time constraint issues with regard to compliance with this Condition as follows:

*“The aviation solution for Windy Edge is linked to and contingent on the rollout of ‘Project Marshall’, which is a large contract run by the MOD to replace its existing fleet of radars across the UK. Essentially the MOD’s old Watchman radars are to be replaced by new Thales radars. The radars at Spadeadam are some of the first in the UK to benefit from the upgrade, but are not yet fully commissioned. Both of the Spadeadam air traffic control radars (Berry Hill and Deadwater Fell) have coverage above Windy Edge.*

*The MOD wishes the aviation solution for Windy Edge to utilise the new Thales radars so that it is future-proofed, therefore agreement of a mitigation solution for Windy Edge has been delayed until such time as the radars are in place and fully operational. This process has taken longer than envisaged at the time the planning application was determined.*

*Once commissioned, the new Thales radars will require further configuring to mitigate Windy Edge. Specifically, the mitigation solution for Windy Edge will involve blanking coverage of the turbines from the Deadwater Fell radar and infilling with the Berry Hill radar. We believe this is an eminently viable radar mitigation solution, and one which would involve the following:*

- *The new radars being commissioned;*
- *A feasibility study undertaken to trial the blank and infill; and*
- *MOD accepting the findings and agreeing the technical solution.*

*You will see this is a process which would be challenging to conclude within our implementation time limit, in particular as it is linked to the rollout of a large MOD radar replacement programme across the whole of the UK.”*

For this reason alone, the applicant seeks to vary Condition 1 through this Section 42 application by obtaining a repeat Condition that effectively restarts the clock from the date of any consent. Given the circumstances involved with site acquisition, the limited time left on the existing consent and the fact that commencement of development has been dependant on the programme of a third party, the MOD, it is considered that the request continues to be justified and reasonable, allowing the potential of further renewable energy to be delivered on a site that has received consent, albeit via appeal. Although the radars have now been replaced at Spadeadam, a mitigation scheme still has to be designed based upon the new radars. It is also fact that of the 25 other original Conditions to be addressed, 9 are suspensive requiring the submission of information for approval before development can be commenced. Some of these require additional ecological survey work. This adds weight to the justification for granting a new three year consent period for the development, as do the subsequent difficulties caused by Covid-19 and various delays in the processing of the current application, partly caused by legal proceedings elsewhere. It was not envisaged by either the applicant or the Council that the parallel time extension request submitted within a month of 18/01251/FUL would take more than two further years to reach a Committee.

Although a number of third parties feel that the developer has had enough time to commence since the original Reporter's Decision Letter in June 2016, the above reasons explain why it is considered that a second time extension is justified – in particular, having awaited the replacement of the radars at Spadeadam, suitable mitigation now requires to be designed accordingly. Whilst it is accepted that, should Condition 14 also be varied, this would allow ground based development to be carried out, turbine erection and operation of the wind farm would still be entirely dependent on a suitable mitigation scheme being designed and approved. Awaiting third party agreement is never an ideal position when it comes to implementing a planning consent but it remains a justification for extension to the commencement of development time period.

In summary, it is considered that the applicant has demonstrated sufficient justification to seek a further three year time period. As with all section 42 applications and should the Committee agree to the request, then all original conditions and Informatives would need to be re-imposed precisely as stated in the appeal Decision Letter. It would also be advisable to attach an additional Applicant Informative to clarify that the development relates precisely to all drawings and submissions granted consent under application reference 13/00789/FUL.

### **Material changes since Decision**

If the justification for the time extension is to be accepted again, it is also necessary to consider whether there have been any further changes in Policy or any other material considerations that would be of significance in terms of the acceptability of the development, since the Reporter's consideration and determination in May/June 2016.

### **Policy**

#### National

Scottish Government policy supports renewable energy, including wind farms, provided that there are no unacceptable and significantly adverse environmental impacts. Since the Reporter decision in June 2016, further Policy updates and statements have been released by the Government which do not indicate any change

in position that would require re-examination of the decision to consent the application.

The Scottish Planning Policy Spatial Framework still positions the site 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.*”

Government 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. 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. More recent guidance and statements by the Scottish Government, following the impact of Covid-19, simply reinforce the importance of renewable energy.

Whilst there remains contention from opposing parties to the position with regard to continued need for wind energy and the progress towards targets, Government guidance and Reporters’ appeal decisions continue to stress that targets are not caps and weight should continue to be attached to the contribution of every scheme towards targets. Any question over the viability of this scheme remains a matter for the developer and is not a justification to deny a further commencement time extension. There is, therefore, no change to Government Policy that would justify any re-examination of the decision to consent the development or to extend its commencement period.

#### Local Development Plan

Although the Council considered the initial Windy Edge application under the Development Plan in force at the time, the Consolidated Local Plan 2011, the Reporter used the newly adopted Local Development Plan Policy ED9 in his reasoning and decision on the appeal. He also considered SESplan policies based upon the 2013 version. The Proposed Strategic Development Plan 2017 reaffirmed the importance of the LDP-led approach to securing renewable energy opportunities in the Borders, even though the 2013 Plan remains in force. There is, therefore, not considered to be any change to Local Development Plan Policy that would justify any re-examination of the decision to consent the development or to extend its commencement period.

#### Supplementary Guidance

The Council’s Supplementary Planning Guidance on Wind Energy 2011 was updated and superseded by the “Renewable Energy” Supplementary Guidance which was 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. Encouragement for a wind farm in this location is, therefore, not changed by the SG within the Spatial Framework although, clearly, there is more detailed Guidance now available to support LDP Policy ED9 and the Guidance now forms part of the adopted LDP.

As part of the preparation of the Guidance, the Ironside Farrar “Landscape Capacity and Cumulative Impact Study was updated. The 2013 version was considered by the Reporter in the appeal decision where he noted that it did not preclude a commercial

scale wind farm in the general location of the site. The 2016 update clarifies that the general location has low capacity (5-10) for additional turbine development above 120m tip height in addition to the consented Windy Edge group, provided there is good separation. It is clear, therefore, that the Landscape Capacity Study does not change the nature of the guidance in the location of the site and, indeed, provides a clearer indication that further turbines could be acceptable in landscape capacity terms. There is, therefore, not considered to be any change to Supplementary Guidance that would justify any re-examination of the decision to consent the development or to extend its commencement period.

### **Cumulative Impacts**

The Reporter considered the issue of cumulative impacts from developments proposed in the vicinity at the time of the decision but felt that schemes such as those proposed at Wauchope and Newcastle Forest were still at an early stage of development and not at application stage. He saw no cumulative reason to oppose the initial consent at Windy Edge. Whilst additional schemes have come forward at scoping stage at Cliffhope and Fawside, only the latter has now reached the stage of S36 application and could not be used to justify refusal of time extension, given no decision on that application has yet been taken. In any case, if there were cumulative issues with Fawside, it would be Fawside itself that would either have to resolve those issues or a decision on that proposal influenced by any cumulative issues. As Members will note in the Fawside Committee Report, there are no such cumulative issues identified with Windy Edge.

Of those schemes that have come forward to application stage since the appeal decision notice, Birneyknowe was refused following appeal and Public Local Inquiry. Of greatest relevance, however, is the consent, following appeal, for 12 turbines at Pines Burn 9.2km to the north-east of Windy Edge. Seven of these turbines would be 149.9m to blade tip and five at 130m. Whilst a current S42 application is being considered to vary commencement time and micrositing allowance (the tip height request here was withdrawn), those variations, if granted, would not justify any refusal of Windy Edge over cumulative concerns. Indeed, in determining the application at Pines Burn, neither the Council nor the Reporter used cumulative impacts with other wind farms to justify the decision. The Reporter was most concerned only with the relationship of Pines Burn with Birneyknowe and not with Windy Edge where, he felt, intervening landform would considerably reduce cumulative effects. It is considered, therefore, that there are no new cumulative reasons that would justify any re-examination of the decision to consent the development or to extend its commencement period.

### **Cultural Heritage Impacts**

The Reporter accepted the impacts of the amended layout and design on the Scheduled Monuments of Hermitage Castle and Chapel. It was also noted that neither the Council nor Historic Environment Scotland (HES) objected on such grounds. Although since the appeal decision, the castle and environs were re-scheduled in March 2017 to include the 'White Dyke' (which rises to the north of the castle to just below the summit of Hermitage Hill), the Reporter still acknowledged the importance of the Dyke and considered it "as if protected" in the appeal decision. Furthermore, the Council Archaeologist believes that, had it been Scheduled initially, it would not have been significantly impacted by the consented wind farm.

After consultation on the current S42 application, HES only raised comment and concern over the tip height and micrositing requests which have subsequently been withdrawn from the proposal.

## **Ecology**

The original appeal decision considered ecological matters and, particularly, impacts on the Langholm-Newcastleton Special Protection Area for its population of hen harriers. It is noted that, whilst ornithology can clearly change over time, the Reporter felt that the assessment in 2014 took into account potential changes to future hen harrier populations. Given the nature of the conditions which still require further surveys and species protection plans, there is no reason to consider a commencement time extension would cause significant ecological issues. This is the view of the Council Ecology Officer.

## **Ministry of Defence/Aviation**

The original scheme was initially considered then subsequently accepted in relation to potential for adverse impacts on NATS radar and both the Eskdalemuir Seismological Recording Station and the Deadwater Fell ATC Radar at RAF Spadeadam. The issue of the ATC Radar has been referred to earlier in this report and is one of the main reasons that the applicant is seeking a time extension, in order to allow the mitigation condition to be addressed and complied with. There is also the issue of compliance with the MOD noise budget for impacts on the Eskdalemuir Seismological Recording Station. It is possible that, should this consent be allowed to time lapse without time extension, then the project may lose its position within the budget and be replaced by other schemes.

The current S42 application also seeks to vary the “suspensive” element of Condition 14 relating to the ATC Radar at RAF Spadeadam to enable all development to be commenced except for turbine erection. The current wording of Condition 14 states:

“No development shall commence unless and until an Air Traffic Control Radar Mitigation Scheme to address the impact of the wind turbine upon air safety has been submitted to and approved in writing by the Planning Authority.”

The applicant wishes to change the wording as follows:

“No part of any turbine shall be erected above ground until an Air Traffic Control Radar Mitigation Scheme to address the impact of the wind turbine upon air safety has been submitted to and approved in writing by the Planning Authority.”

As this Condition relates entirely to defence aviation interests, the views of the MOD should carry the utmost weight. Whilst they had objections to the original tip height increase request (for Eskdalemuir ENB reasons), there was no objection to variation of Condition 14 to enable all development to commence except for turbine erection, and before any radar mitigation scheme was approved. Such wording has been used on other wind farm approvals recently, particularly on those where there has been some dialogue between the developer and the MOD over mitigation strategies. It is also the wording used in Condition 15 of the consent in relation to the agreement of a radar mitigation scheme in liaison with NATS (referring to a different, civilian air traffic radar). It is, therefore, considered that given the acceptance of the MOD, the revised wording of the Condition is acceptable.

There is objection and concern expressed by Community Councils and members of the public relating to the potential for ground-based development to be carried out and then for the wind turbines not to be erected for some time until an ATC Radar Mitigation Scheme is agreed, if at all. There is concern that the Council would not have the control to insist that the development be removed and the ground reinstated should no mitigation be possible. Whilst these concerns are entirely understood, it is not envisaged that the MOD would have raised no objection, had they believed a solution would not be possible. There has clearly been dialogue between them and the applicant and the MOD know the details of the proposed development.

However, it is accepted that the terms of the decommissioning, restoration and aftercare in Conditions 8 and 9 are entirely based upon timescales triggered only after the Final Commissioning Date i.e. the date of the last turbine to be exporting electricity to the network. The restoration of the site could not be requested or enforced under Condition 9 if no turbines had ever been erected due to any unforeseen failure to reach agreement under Condition 14. Condition 10 does request the delivery and agreement of a bond covering restoration and aftercare of the site, in the event of default by the company. The wording of Condition 10, however, does refer to the "*decommissioning, restoration and aftercare obligations contained in Condition 9*" which, of course, includes a timescale only triggered after the turbines are erected and there is a "Final Commissioning Date". If the timescale within those Conditions were able to also reflect a period of time after development commencement and not erection of the last turbine, then this concern could be addressed.

For these reasons, I believe there is justification to ensure there is no loophole in the conditions enabling development to remain in perpetuity, in the event that turbines are not erected on the site within a 25 year timescale. With a S42 application, the Council cannot vary a Condition if that Condition has not been applied for to be varied. So whilst it would not be possible to amend Conditions 8-10 to secure restoration in the event that turbines are not erected, new Conditions could be added to do just that. Additional Conditions 9a and 10a are therefore recommended below.

The applicant is aware of these suggested Conditions and accepts them. However, the Upper Liddesdale and Hermitage Community Council maintain their objections. Despite the suggested additional conditions, they believe environmental damage will have been done for a 25 year period yet with potentially no wind energy being produced as a result. Whilst these fears are understood, it would potentially be the same position with any wind farm where there is a mixture of pre-commencement conditions, both pre-commencement of all development and pre-commencement of actual turbine erection. As such conditions have been considered acceptable by Reporters on appeal decisions, the safeguard suggested in Conditions 9a and 10a is considered to be an acceptable response to these concerns, ensuring restoration/decommissioning is triggered, nomatter what type of development occurs over a 25 year period.

Subject to these additional Conditions, it is considered that the variation of Condition 14 is, therefore, justified and acceptable.

## **CONCLUSION**

There is a valid consent for a wind farm at Windy Edge, allowing commencement up to December this year. Given the nature and requirements of some suspensive conditions, however, the applicant has demonstrated justification for a renewal of the three year commencement period for the development. Furthermore, there has been no significant policy or other material changes that would determine that the original

appeal decision should be re-examined and reversed. Similarly, there are no objections from the MOD to enabling development to be commenced prior to agreement of a Radar Mitigation Scheme, provided no turbines are erected until that agreement. A restoration safeguard is also recommended through additional Conditions in the event that turbines are not subsequently erected.

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

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

### **CONDITIONS**

#### **Time limit**

1. The development shall be begun no later than 3 years from the date of this permission.

Reason: To specify the time period within which development should start.

#### **Siting, Design and Appearance**

2. Prior to commencement of the development, the developer shall submit details of the proposed make and model of turbine that will be utilised. Clarification of proposed external colour, rotational direction, noise output and rotational speeds shall be included in the specification provided in response to this condition. No other model of turbine shall be utilised.

Reason: For the avoidance of doubt to enable detailed consideration of any variation from the turbines assessed as part of this application.

3. The overall height of the wind turbines shall not exceed 110 metres for Turbines 1, 2 and 4, and 125 metres for Turbines 3, 5,6,7,8 and 9, to the tip of the blade when the blade is in the vertical position, when measured from natural ground conditions immediately adjacent to the turbine base. The overall height of the hub/nacelle shall not exceed 65 metres for Turbines 1, 2, and 4; and 80 metres for Turbines 3, 5,6,7,8 and 9. The wind turbine blades on all the turbines hereby permitted shall rotate in the same direction.

Reason: To ensure that the development is carried out in accordance with the turbines portrayed within the application, in the interests of visual amenity.

4. Prior to the commencement of development, the confirmed 9 turbine wind farm layout including the locations of all turbines, buildings, borrow pits, hardstandings and temporary and permanent access tracks, plus the location of all on-site cabling trenches shall be submitted to the planning authority. The layout shall be provided on an adequately detailed drawing which includes contours, and shall take account of the 50m micrositing allowance identified within the Environmental Statement where such allowance is known to be required prior to the commencement of development. Supporting commentary shall be provided with the drawing explaining the rationale behind the micrositing and demonstrating that it has taken account of consultee advice relating to impact on the peat environment and groundwater resource. The development shall be carried out in strict accordance with the details included in the drawings submitted in response to this condition. Any further micrositing required during construction within the agreed 50m allowance, adhering to the requirements of condition 24, will be submitted to the planning authority for their information on an amended layout drawing.

Reason: To enable the planning authority to understand precisely where each component of the site will be sited in relation to other elements of the site (including its boundaries), and to allow for minor changes to be made to overcome potential difficulties arising in respect of archaeology, ecology, hydrology.

5. Notwithstanding the details shown in the submitted Environmental Statement, details of external materials relating to construction of the access tracks, crane hardstandings, the control building and any other on site apparatus/equipment shall be submitted to, and approved in writing by the planning authority. The development shall be undertaken in strict accordance with the details approved in response to this condition.

Reason: In the interests of visual amenity.

6. All cables between the turbines and the substation shall be laid underground.

Reason: In the interests of visual amenity.

#### **Safety:**

7. All turbines and components shall be installed to meet the safety standards set by British Standard BS EN 61400-1: 2005 'Wind turbine generator systems: Safety requirements' or International Electro-technical Commission IEC 16400.

Reason: In the interests of health and safety of all users of the site and its environs.

#### **Site Decommissioning, Restoration and Aftercare:**

8. This consent expires 25 years from the date on which the last wind turbine generator forming part of the development is commissioned and exporting electricity to the national grid (Final Commissioning Date). Confirmation of the Final Commissioning Date must be given in writing to the Planning Authority within 28 working days of that event.

Reason: To define the duration of the consent.

9. No later than 12 months before the decommissioning of the site or expiry of the consent associated with this permission (whichever is the earlier) a decommissioning, restoration and aftercare scheme shall be submitted to the Planning Authority for its written approval which shall provide for the removal of the wind turbines, and associated development above and on the ground (including tracks and hardstanding), and the foundations of the wind turbines to a depth of 1.2 metres below ground level. The scheme shall include proposals for the management and the timing of the works and for the restoration of the site. The scheme shall be implemented as approved within 3 years of the expiry of the consent.

Reason: To ensure that all wind turbines and associated development are removed from site at the expiry of the consent.

- 9a In the event that no turbines have been erected within 25 years of the commencement of development, a decommissioning, restoration and aftercare scheme shall be submitted to the Planning Authority for its written approval within six months of the expiry of the aforementioned date. This scheme shall provide for the removal of any associated development above and on the ground (including tracks and hardstanding), and any foundations of wind turbines/cranes to a depth of 1.2 metres below ground level. The scheme shall include proposals for the management and the timing of the works and for the restoration of the site. The scheme shall be implemented as approved within 3 years of the expiry of aforementioned period.

Reason: To ensure that all associated development is removed from site at the expiry of the specified period.

**Financial Guarantee:**

10. There shall be no commencement of development unless the Company 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 9 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 9. 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 planning permission in the event of default by the Company.
- 10a. The bond or other form of financial guarantee required in Condition 10 shall also include clauses securing the cost of performance of all decommissioning, restoration and aftercare obligations, should no wind turbines be erected on the site within the period specified in Condition 9a following commencement of development.  
Reason: To ensure that there are sufficient funds to secure performance of the decommissioning; restoration and aftercare conditions attached to this planning permission in the event of default by the Company.

**Turbine Failure/Removal:**

11. 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 the wind turbine foundation to a depth of 1.2m below ground level, the wind turbine and its ancillary equipment shall be dismantled and removed from the site and the site restored to a condition to be agreed by the Planning Authority. The restoration of the land shall be completed within 12 months of the removal of the turbine.  
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.

**Air Traffic Safety:**

12. The turbines shall be fitted with MOD-accredited 25 candela omni-directional aviation lighting OR infra – red 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 will be erected with this lighting installed and the lighting will remain operational throughout the duration of this consent.  
Reason: In the interests of aviation safety.
13. Prior to the erection of the first wind turbine, the developer shall provide written confirmation to the Planning Authority and the Ministry of Defence of the

anticipated date of commencement of and completion of construction; the maximum height above ground level of construction equipment and the anemometry mast; the position of each wind turbine in latitude and longitude; and the hub height and rotor diameter of each turbine (in metres). The developer shall give the Planning Authority and the Ministry of Defence notice as soon as reasonably practicable if any changes are made to the information required by this condition.

Reason: In the interests of aviation safety.

**MoD Air Traffic Control radar:**

14. No part of any turbine shall be erected above ground until an Air Traffic Control Radar Mitigation Scheme to address the impact of the wind turbine upon air safety has been submitted to and approved in writing by the Planning Authority.

The Air Traffic Control Radar Mitigation Scheme is a scheme designed to mitigate the impact of the development upon the operation of the Air Traffic Control Radar at Spadeadam ("the Radar") and the air traffic control operations of the Ministry of Defence (MOD) which is reliant upon the Radar. The Air Traffic Control Radar Mitigation Scheme shall set out the appropriate measures to be implemented to mitigate the impact of the development on the Radar and shall be in place for the operational life of the development provided the Radar remains in operation.

No turbines shall become operational unless and until all those measures required by the approved Air Traffic Control Radar Mitigation Scheme to be implemented prior to the operation of the turbines have been implemented and the Planning Authority has confirmed this in writing. The development shall thereafter be operated fully in accordance with the approved Air Traffic Control Radar Mitigation Scheme.

Reason: In the interests of aviation safety.

**NATS Radar**

15. No part of any Turbine shall be erected above ground until a Primary Radar Mitigation Scheme agreed with the Operator has been submitted to and approved in writing by the Scottish Borders Council in order to avoid the impact of the development on the Primary Radar of the Operator located at Great Dun Fell and associated air traffic management operations.

Reason: In the interests of aviation safety.

16. No blades shall be fitted to any Turbine unless and until the approved Primary Radar Mitigation Scheme has been implemented and the development shall thereafter be operated fully in accordance with such approved Scheme.

Reason: In the interests of aviation safety.

For the purpose of conditions 15 and 16 above:

"Operator" means NATS (En Route) plc, incorporated under the Companies Act (4129273) whose registered office is 4000 Parkway, Whiteley, Fareham, Hants PO15 7FL or such other organisation licensed from time to time under sections 5 and 6 of the Transport Act 2000 to provide air traffic services to the relevant managed area (within the meaning of section 40 of that Act).

"Primary Radar Mitigation Scheme" or "Scheme" means a detailed scheme agreed with the Operator which sets out the measures to be taken to avoid at all

times the impact of the development on the Great Dun Fell primary radar and air traffic management operations of the Operator.”

**Signage:**

17. Notwithstanding the provisions of the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984, no symbols, signs, logos or other lettering (other than those required for health and safety reasons) shall be displayed on the turbines, other buildings or structures within the site without the written approval of the Planning Authority.

Reason: To ensure that the development does not unduly prejudice public amenity.

18. No signage, other than that required for health and safety and for traffic management, shall be erected within the application site without the written consent of the Planning Authority.

Reason: To ensure that the development does not unduly prejudice public amenity.

**Road Safety & Traffic Management:**

19. No construction traffic shall access the site until a Traffic Management and Road Safety Plan has been submitted to and approved in writing by the Planning Authority, which includes detailed information relating to the following matters:

- a) detailed design of any widening or other alteration to the road network and proposals for reinstatement once the loads have been delivered;
- b) management of abnormal vehicle movements and other associated construction traffic movements (including trial runs following agreed road widening works);
- c) date and time schedules for delivery of all components of the development involving abnormal loads;
- d) road condition survey, detailed proposals of finalised road widening/surfacing/improvements to accommodate abnormal loads and a method of ensuring that any damages to the road due to construction and/or abnormal loads associated with the development are repaired in an agreed manner and to an agreed timetable;
- e) all new signage identifying to road users the presence of the site, access and potential to encounter construction traffic; and
- f) wheel washing facilities at the site access.
- g) details of the delivery times for construction materials or equipment taking into account impact on residential amenities

The development shall be undertaken in strict accordance with the details approved in response to this Condition.

Reason: To ensure that the development is compatible with road user amenity, road safety and traffic management objectives, and also to provide adequate restoration to offset the environmental impact of the measures proposed.

**Rights of Way:**

20. There shall be no obstruction, diversion or closure (caused by implementation of the development) of any Right of Way/public access path within or adjacent to the application site and its proposed accesses before, during or after development unless such actions have been formally agreed in writing by the planning authority.

Reason: To protect the amenity and safety of users of the public path network.

#### **Ecology and Ornithology:**

21. Prior to the commencement of development a scheme for the protection of species and habitat enhancement shall be submitted and approved in writing by the Planning Authority. The submitted scheme shall include:

- a) Supplementary/checking surveys for protected species (including schedule 1 birds, otter, badger, bats, water vole, red squirrel and nests of all breeding birds) shall be carried out by a suitably qualified person or persons to inform construction activities and any required mitigation
- b) Species mitigation and management plan
- c) A Before-After-Control-Impact (BACI) monitoring programme for schedule 1 raptors and breeding birds survey (black grouse and wader) at 1, 3, 5, 10 and 15 year intervals
- d) A landscape Habitat Management and Enhancement Plan, including measures appropriate for hen harrier

Upon approval the scheme shall for the protection of species and habitat enhancement shall be implemented unless otherwise agreed in writing by the Planning Authority

Reason: To make sure protected and other species are not harmed during construction and the site is enhanced for the benefit of biodiversity.

#### **Environmental Management:**

22. At least 2 months prior to the commencement of development (other than agreed enabling works in terms of Condition 23) a full site specific environmental management plan (EMP) shall be submitted to and approved in writing by the Planning Authority (in consultation with SEPA and other agencies such as SNH as appropriate) and all work shall be carried out in accordance with the details in the plan approved in response to this condition. The plan shall include the following components (this list is not exhaustive):

- a) a study of the site and its environs to establish precisely how local water sources and supplies relate to and/or would be affected by the implementation of the development, plus mitigation in relation to this matter;
- b) a drainage management strategy, demonstrating how all surface and waste water arising during and after development will be managed and prevented from polluting any watercourses or sources (based on SUDS principles – Sustainable Urban Drainage Systems);
- c) a plan for the management of flood risk, in particular in relation to parts of the site close to watercourses and proposed crossings of the watercourse;
- d) a focussed waste management strategy;
- e) a strategy for the management of peat, in the form of a Peat Management Plan;
- f) a strategy for management of dust arising during construction of the tracks, hardstandings and foundations;
- g) details of measures proposed to contain all materials and fuels to be utilised during construction; and
- h) details of borrow pit excavation and reinstatement (including the profile); including proposals for how any groundwater will be dealt with, if encountered.

Reason: To control pollution of air, land and water.

23. Prior to Commencement of Development, the wind farm operator shall prepare a Construction Method Statement (to include a Risk Assessment) for the approval of the Planning Authority, in consultation with SNH and SEPA. The Construction Method Statement shall comprise the following details:

- a) all on-site construction, and construction of access tracks, including drainage; mitigation, post-construction restoration, and reinstatement work, as well as the timetables for such work;
- b) details relating to a 'tool box talk' on archaeology to on-site contractors preparing the site infrastructure;
- c) any temporary diversions of rights of way and associated signage;
- d) surface water drainage measures to comply with national guidance on pollution prevention, including surface water run-off from internal access roads;
- e) details of waste water management during construction;
- f) the arrangement for the on-site storage of fuel oil and other chemicals;
- g) the method, frequency and duration of ecological monitoring, particularly of watercourses, over the Construction Period of the wind farm development;
- h) details of the phasing/timing of construction of all components of the development including dates for delivery of components;
- i) details of water supply;
- j) details of measures to reduce soil erosion;
- k) details of assessment and mitigation in respect of construction noise, including measures adopted during evenings, night time, early mornings, weekends and public holidays
- l) details relating to minimisation of environmental impact of road construction;
- m) details of any watercourse engineering works and measures for the implementation of buffer zones around existing watercourses and features;
- n) details of timescale for the restoration of the site, including the site compound and crane hard-standing areas; and
- o) details of contingency planning in the event of accidental release of materials which could cause harm to the environment.

Subject to the following paragraph, no work shall begin on the development, apart from the enabling works, until the Construction Method Statement has been approved. Once approved, the works specified in the Construction Method Statement shall be carried out as approved.

The enabling works shall not be carried out until details of them (including any necessary measures for public road improvements outwith the site, traffic management, works to be implemented at the entrance to the site to prevent dust and mud entering the public highway, or any related programme of monitoring the condition of public roads) have been submitted to and approved in writing by the Planning Authority, in consultation with SNH and SEPA. All of the enabling works shall be carried out in accordance with the approved details.

Reason: It is essential to ensure that all construction works are carried out in a controlled manner which minimises environmental damage; the CMS will provide a useable document identifying guidelines and conditions for construction, but which also gives recourse to mitigating action in the event of construction deviating from the CMS. The document, with the Environmental Management Plan required by Condition 22 of this permission, shall provide the (Ecological) Clerk of Works (required by Condition 24 of this permission) with information with which to monitor construction and environmental management.

24. Prior to the Commencement of Development and for the period of the enabling works, the wind farm operator shall appoint an independent Ecological Clerk of

Works (ECoW) under terms which have first been submitted to and agreed in writing by the planning authority, in consultation with SNH and SEPA, and shall include that the appointment shall be for the period of wind farm construction, including micro-siting and the finalisation of the wind farm layout, as well as subsequent post-construction restoration.

The ECoW's terms of appointment are to impose a duty to monitor compliance with all the ecological and hydrological aspects of the Construction Method Statement, including post-construction restoration, which have been approved under the terms of Condition 23 above. The ECoW's terms of appointment are to require the ECoW to report promptly to the wind farm operator's nominated Construction Project Manager any non-compliance with the hydrological or ecological aspects of the Construction Method Statement. The wind farm operator shall confer on the ECoW (and comply with instructions given in the exercise of) the power to stop any construction or restoration activity on-site which in his or her view (acting reasonably) could lead to significant effects on the environment, and shall without delay, report the stoppage, with reasons, to the wind farm operator's nominated Construction Project Manager and to the Planning Authority, SNH and SEPA.

Reason: The presence of an ECoW at the site is essential to enable unforeseen or unplanned occurrences relating to the environment on and in relation to the site, in particular when it relates to impact on biodiversity and/or the water environment, to be mitigated.

#### **Archaeology:**

25. No development shall take place until the applicant has secured a programme of archaeological work in accordance with a Written Scheme of Investigation (WSI) outlining a Watching Brief which must be implemented during relevant development works. The requirements of this are:
  - a) The WSI shall be formulated and implemented by a contracted archaeological organisation working to the standards of the Institute for Archaeologists (IfA) approval of which shall be in writing by the Planning Authority;
  - b) Access shall be afforded to the nominated archaeologist to supervise relevant development works, investigate and record features of interest, and recover finds and samples;
  - c) If significant finds, features or deposits are discovered all works shall cease and the nominated archaeologist(s) will contact the Council's Archaeology Officer immediately for consultation which may result in further developer funded archaeological mitigation;
  - d) If significant archaeology is identified by the contracted archaeologists and in agreement with the Planning Authority, a further scheme of mitigation subject to an amended WSI shall be implemented;
  - e) Results shall be submitted to the Planning Authority for approval in the form of a Data Structure Report (DSR) within one month following completion of all on-site archaeological works.
  - f) In the event that significant archaeological materials (deemed so by the Planning Authority in consultation with the developer's archaeological contractor) are recovered either during the course of archaeological investigation or development, the developer will ensure that these undergo post-excavation research by a contracted archaeologist in accordance with a separate Post-Excavation Research Design (PERD) approved in writing by the Planning Authority.
  - g) The results of post-excavation research will be submitted to the Planning Authority and disseminated appropriately through publication and community

- engagement within one year of the final on-site archaeological investigations and reporting; and
- h) The applicant's archaeological contractor shall ensure that the full archive of materials and records be submitted to Treasure Trove within one year of the completion of post-excavation research and archived appropriately according to national guidelines

The developer shall give a minimum of two weeks' notice of the commencement of the approved archaeological works in writing to the nominated archaeological contractor and to the Planning Authority. No works shall commence until the two week notice period has expired.

No development shall take place until fencing has been erected, in a manner to be agreed in writing by the Planning Authority, about the identified area of archaeological interest and no work shall take place inside the fencing without the prior written consent of the Planning Authority

Reason: The site is within an area where ground works may interfere with, or result in the destruction of, archaeological remains. This condition affords a reasonable opportunity to record the history of the site, secure appropriate analysis, allow sufficient time to commence archaeological works and safeguard any sites of archaeological interest.

#### **Noise:**

26. Noise levels from the combined effects of the wind turbines forming this development at any noise sensitive premises (in existence at the time of permission) where the occupier of the property has no financial interest in the development shall not exceed an external free field LA90, 10min level of 35dB (A), at any 10 metre height wind speed up to 12 m/s. For properties where the occupier has a financial interest in the development, the above levels should not exceed 45dB (A). Any tonal elements in the noise spectra shall be assessed using the joint Nordic Method and the tone level shall not exceed 2dB above the 'masking Threshold for Tones in Noise'.

Reason: To give protection to residents/occupiers of noise sensitive properties in proximity to the development, in the interests of private amenity.

27. In the event of a complaint, which in the view of the Planning Authority is justified, being received by the Planning Authority following implementation of the development and the wind farm becoming operational, within 21 days of being notified of the complaint by the Planning Authority the wind farm operator shall, at its expense, undertake a professional assessment of the nature of the alleged noise disturbance. The selected consultants used in the analysis shall first have been approved by the planning authority. Thereafter, in the case of each complaint where a noise nuisance is proved to be occurring, mitigation shall be carried out of a nature and within a timeframe to be agreed in writing by the planning authority.
- Reason: To give protection to residents/occupiers of noise sensitive properties in proximity to the development, in the interests of private amenity.

#### **Informatics**

**Relevant scheme:** All conditions above relate to the details of the development and supporting information that was granted planning consent following appeal on 9 June 2016, under application reference 13/00789/FUL.

**Notice of the start of development:** The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended

to start. Failure to do so is a breach of planning control. It could result in the planning authority taking enforcement action (See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended)).

**Notice of the completion of the development:** As soon as possible after it is finished, the person who completed the development must write to the planning authority to confirm the position (See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended)).

**Display of notice:** A notice must be displayed on or near the site while work is being carried out. The planning authority can provide more information about the form of that notice and where to display it (See section 27C of the Town and Country Planning (Scotland) Act 1997 Act (as amended) and Schedule 7 to the Town and Country Planning (Development Management Procedure) (Scotland) Regulations

#### DRAWING NUMBERS

Location Plan – Consented Turbine Positions

#### **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



18/01456/FUL

Land North East And North West  
Of Farmhouse (Windy Edge)  
Braidlie  
Hawick

