

## STATEMENT OF FURTHER WRITTEN SUBMISSIONS

### APPLICANT'S RESPONSE TO:

(1) THIRD PARTY REPRESENTATIONS ON NOISE IMPACT ASSESSMENT &

(2) ADOPTION OF NATIONAL PLANNING FRAMEWORK 4

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**Appeal against the delegated refusal of planning permission for the proposed erection of timber storage and processing facility with new access junction, yard area, landscaping, tree planting, SUDs and associated works and planning permission in principle for associated dwellinghouse with office for the timber processing facility**

**Land South West of West Loch Farmhouse, Peebles**

**On behalf of Mr Richard Spray, Pentland Biomass**

**Scottish Borders Council References: 22/00933/FUL & 23/00001/RREF**

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### Purpose of Statement

1. This Statement has been prepared by Chartered Town Planning Consultants, John Handley Associates Ltd on behalf of the applicant and site owner, Mr Richard Spray of Pentland Biomass. It provides the applicant's response on two matters: (1) a response to the three public representations which commented on the applicant's Noise Impact Assessment; and (2) the applicant's assessment of the impact of National Planning Framework 4 (NPF4) which was adopted on 13 February 2023.

### Response to Public Representations on Applicant's Noise Impact Assessment

2. Three local residents have submitted additional comments in response to the applicant's Noise Impact Assessment. However, none of these representations raise any new matters and all largely repeat previous comments which we addressed in the Further Written Statement dated 14 February 2023. We would therefore direct the Local Review Body (LRB) to our earlier Statement which confirms that the various public representations have misunderstood the scale, nature and type of development being proposed on the application site.
3. The latest public representations have criticised the approach and findings of the detailed Noise Impact Assessment submitted by the applicant, but have not provided any empirical evidence to support this opposing view. In contrast, the submitted Noise Impact Assessment (**Document PB09**) has been undertaken by an accredited and well-respected noise consultant in accordance with relevant British Standards, Scottish Government advice and World Health Organisation guidance. It is a robust and detailed assessment.
4. Furthermore, and as we have confirmed in our earlier Statement (see paragraphs 16 -18 of FWS dated 13 February 2023), the Noise Assessment includes recommended mitigation measures to ensure that there is no adverse noise impact on any residential properties.

5. We can confirm that the applicant would be happy to accept conditions requiring the development to be implemented in accordance with the recommendations of the submitted Noise Assessment, and would welcome the opportunity to agree suitable conditions with the Council to control this matter. This approach would address the noise-related issues raised by the public, and would ensure that these concerns are properly controlled and regulated.

#### **National Planning Framework 4**

6. In response to the LRB's invitation to provide comments on the impact of NPF4 on the planning application, we can confirm that we have reviewed the relevant provisions of the NPF4 and also the Scottish Government's Chief Planner's Letter of 8 February 2023 which provides advice on the role of NPF4 as part of the statutory development plan. A copy of the Chief Planner's letter is submitted as **Document PB12**. It provides advice to planning authorities on the transitional arrangements for the operation of NPF4, and also advises on how to apply NPF4 policy. It confirms that:
  - From 13 February, NPF4 will form part of the statutory development plan, along with the LDP applicable to the area at that time and its supplementary guidance.
  - LDPs already adopted will continue to be part of the development plan, and existing LDP land allocations will be maintained.
  - However, in the event of any incompatibility between a provision of NPF and a provision of an LDP, whichever of them is the later in date is to prevail (in this case the NPF4 was adopted later than the Scottish Borders LDP and therefore priority must be given to NPF4).
  - Planning Decisions are to be made in accordance with the development plan unless material considerations indicate otherwise.
  - Application of planning judgement to the circumstances of an individual situation remains essential to all decision making, informed by principles of proportionality and reasonableness.
  - It is important to bear in mind NPF4 must be read and applied as a whole, and conflicts between policies are to be expected. Factors for and against development will be weighed up in the balance of planning judgement.
  - It is recognised that it may take some time for planning authorities and stakeholders to get to grips with the NPF4 policies, and in particular the interface with individual LDP policies.
  - In the event of any incompatibility between a provision of NPF and a provision of an LDP, whichever of them is the later in date is to prevail. Provisions that are contradictory or in conflict would be likely to be considered incompatible.
7. Having set this context, this planning application must be considered in relation to the policies of NPF4, and in the event that there is any conflict or incompatibility between the policies of the LDP and the policies of the NPF4, it is the NPF4 that must be used to determine this planning application.
8. We have already provided comments on the NPF4 at paragraphs 40 to 45 of our Further Written Statement dated 13 February 2023 and concluded that this planning application accords with the relevant provisions of Policy 29 of NPF4.

9. NPF4 Policy 29 is set out on page 86, and covers “*Rural Development*”. Part a) iii of Policy 29 specifically confirms that: “*production and processing facilities for local produce and materials, for example sawmills*” will be supported.
10. The proposed house/office element can also be supported by NPF4 Policy 17 which covers “*Rural Homes*” and is set out on page 65 of NPF4.
11. Part (a)v of Policy 17 confirms that: “*Development proposals for new homes in rural areas will be supported where the development is suitably scaled, sited and designed to be in keeping with the character of the area and the development is demonstrated to be necessary to support the sustainable management of a viable rural business ... and there is an essential need for a worker ... to live permanently at or near their place of work.*”
12. As we have explained at paragraphs 63 to 73 of our Grounds of Appeal Statement, the primary purpose of this application is to secure detailed planning permission for the new timber storage yard on the site, to allow the relocation of the existing facility from its current Loanhead base. A plot for the erection of a new house and permanent office/staff accommodation has also been included and this part of the site would provide a new house for the manager of the new timber yard operation as well as permanent office and staff accommodation. It would in effect become the new base for the Pentland Biomass operation following the closure of the Loanhead timber yard, and would provide on-site management and security of the new facility which is considered necessary given the expensive (£1M+) equipment that will be stored on site.
13. At this stage, it is only planning permission in principle that is being sought for that element, with all detailed design, access and siting matters for the proposed house and permanent office/staff accommodation to be reserved for future approval. This reflects the proposed phasing and delivery of the new timber yard facility and the anticipation that it will take time for the new timber storage area to be fully operational following the closure of the current facility at Loanhead.
14. For this reason, the applicant would be happy to accept a condition on any grant of planning permission restricting the occupation of the proposed house and permanent office/staff accommodation until the main timber yard development has become fully operational. This approach will ensure that the new house is directly linked to the rural business.
15. We can also confirm that the applicant would be happy to control the delivery and future occupation of the proposed house/office building by way of a condition or a suitable legal agreement to ensure that it is directly linked to the rural business at all times.
16. This approach would allow the planning application to be supported by part a)v of NPF4 Policy 17.

17. The application proposals can therefore be supported by NPF4 Policies 29 and 17 which cover Rural Development and Rural Homes. These are the equivalent national policies for LDP Policies ED7 and HD2.
18. As the Chief Planner’s letter has advised that NPF4 must be read and applied as a whole, we have assessed the application proposals against all 33 policies set out in NPF4. The table below provides this assessment, and a similar exercise was undertaken in respect of the relevant LDP Policies at pages 29 to 33 of the original Supporting Planning Statement.

<b>Assessment of NPF4 Policies</b>	
<b>Policy</b>	<b>How Policy Requirement is Met or Addressed</b>
<p><b>Policy 1 – Tackling the Climate and Nature Crises</b></p>	<p>As we have explained in detail in the submitted Supporting Planning Statement and accompanying Design Statement, the application site has been selected following an extensive site search exercise which has adopted a range of sustainability principles as key considerations for selecting this particular location for the relocated timber yard operation. The applicant has incorporated these key sustainability principles as part of the layout and design of the new development which will ensure that the development supports the long term sustainable use and management of the forest estate within which the facility is to be located.</p> <p>The development has also been specifically designed to ensure no adverse impact on air and water quality and the site has been chosen to avoid impact on any identified natural resources, landscapes, habitats, species or any built and cultural resources. The design approach makes efficient use of soils, energy and resources, and has been prepared to minimise waste and wastewater through sustainable on-site management.</p> <p>The application proposals therefore accord with the relevant requirements of Policy 1 which requires development proposals to give consideration to the global climate and nature crises.</p>
<p><b>Policy 2 – Climate Mitigation and Adaptation</b></p>	<p>As set out in the submitted Design Statement, the proposals for the site have been designed with reference to climate change, mitigation and adaptation. The design and siting of the proposed development minimises lifecycle greenhouse gas emissions and has been designed to adapt to current and future risks from climate change.</p> <p>The application proposals have therefore been designed to comply with Policy 2.</p>
<p><b>Policy 3 – Biodiversity</b></p> <p><b>Policy 4 – Natural Places</b></p>	<p>The application proposals are a “local development”. The application site contains no trees or landscape features and due to its use as grazing land has limited ecological interest. It is not subject to any landscape, environmental or ecological designations and is not located within any Sensitive Areas.</p> <p>As confirmed in the Arboricultural Assessment and Tree Protection Plan (<b>PB07 and PB08</b>) and the Ecology Appraisal (<b>PB10</b>) there will be no adverse impact on any trees or protected species within or surrounding the application site.</p> <p>A range of ecological enhancements will be provided as an integral part of the development. This includes the provision of a substantial landscape framework comprising local species of trees and shrubs which will enhance the landscape setting and the biodiversity of the site. This will include new tree planting, wildlife hedgerows, consisting of a mixture hawthorn, blackthorn and elder, to improve and provide a natural habitat for nesting birds and small mammals.</p>

	<p>The Arboricultural Assessment and Ecological Appraisal include recommendations to ensure that all adjacent trees are protected and safeguarded and to ensure that nesting birds are protected prior to construction of the development. We can confirm that the applicant would be happy to agree to suitable conditions requiring the development to be implemented in accordance with the recommendations set out in the Arboricultural Assessment and Ecological Appraisal.</p> <p>The application proposals therefore meet the requirements of Policies 3 and 4 as it will contribute to and includes appropriate measures for the protection and enhancement of biodiversity and will have no adverse impact on any protected sites, areas or species.</p>
<b>Policy 5 – Soils</b>	<p>The application site does not contain any prime agricultural land; land of local importance; peatland or carbon-rich soils. All soil will be retained on site and will not be damaged or sealed.</p> <p>The application proposals therefore meet the requirements of Policy 5.</p>
<b>Policy 6 – Forestry, Woodland and Trees</b>	<p>As discussed above, and confirmed in the Arboricultural Assessment (<b>PB07</b>) there are no trees within the application site and there will be no adverse impact on any trees surrounding the site.</p> <p>The application proposals will, however, include significant areas of new tree planting which will enhance, expand and improve tree cover.</p> <p>The application proposals can therefore be supported by Policy 6 which confirms that development proposals that enhance, expand and improve woodland and tree cover will be supported.</p>
<b>Policy 7 – Historic Assets and Places</b>	<p>The application site contains no historic assets or places; listed buildings; conservation areas or scheduled monuments, and will have no impact on any designated heritage assets.</p> <p>The Council's Archaeology Officer has noted that there <i>may</i> be archaeological interest in the adjacent farm steading and has recommended that a condition should be imposed to require the applicant to secure the implementation of a programme of archaeological work in accordance with a Written Scheme of Investigation.</p> <p>We can confirm that the applicant is happy to accept this condition and undertake the required archaeological evaluation.</p> <p>The application proposals therefore meet the requirements of Policy 7.</p>
<b>Policy 8 – Green Belts</b>	<p>The application site is not located within a designated green belt. Policy 8 is not relevant to this proposal.</p>
<b>Policy 9 – Brownfield, Vacant and Derelict Land and Empty Buildings</b>	<p>The application site is not brownfield or contaminated land, and does not contain any existing buildings.</p> <p>The application site is a greenfield site, but as we have outlined above, the proposals can be supported by LDP Policies ED7 and HD2 in relation to rural development and rural homes. This allows the application to meet the requirements of Policy 9(b).</p>
<b>Policy 10 – Coastal Development</b>	<p>Policy 10 is not relevant to this proposal as it does not involve the development of a coastal area.</p>
<b>Policy 11 – Energy</b>	<p>Policy 11 is not relevant as it does not involve an energy development, wind farm, or renewable, low-carbon and zero emissions technology.</p>

<p><b>Policy 12 – Zero Waste</b></p>	<p>As noted in the Design Statement and Supporting Planning Statement, the application proposals have been specifically designed to reduce, reuse, or recycle materials in line with the waste hierarchy. For example, all of the stored timber will be processed (including saw dust and bark for composting) and there will be no waste material produced.</p> <p>The application proposals therefore meet the requirements of Policy 12.</p>
<p><b>Policy 13 – Sustainable Transport</b></p>	<p>As we have confirmed in the Grounds of Appeal Statement (paragraph 25) the application site was selected for a number of specific reasons that are related to sustainable travel measures. These includes the following key considerations:</p> <ol style="list-style-type: none"> <li>1. Scottish Borders Council supports forestry related enterprises and considers these to be an important part of the Scottish Borders economy.</li> <li>2. Scottish Borders LDP Policy ED7 supports timber processing facilities in countryside locations, such as the application site.</li> <li>3. The application site is located within the 1,000 hectare Westloch Forest Estate which has been the subject of a recent restocking and replanting programme as a commercial conifer forest.</li> <li>4. The application site benefits from its direct access to the A703 which is an Approved Route for Timber Transportation and is linked to the A703 by a public road which is also classified as a Consultation Route for timber transport.</li> <li>5. A new forest access route has been constructed immediately to the west of the application site.</li> <li>6. The site benefits from an existing, direct access to approved timber transport routes and is located in an area noted for its timber production and timber processing facilities.</li> <li>7. The majority of the company's sources of timber are located within the Scottish Borders and an accessible location close to existing timber stocks was an important consideration from a sustainability perspective and to reduce haulage costs.</li> <li>8. The majority of the staff employed by the Biomass company also live in the Scottish Borders area and the selection of this particular site offered further advantages in terms of a reduction in staff commuting distances and travel costs.</li> </ol> <p>For these reasons, the selection of this site for this proposed development meets the requirements of Policy 13 which supports development proposals where it can be demonstrated that the transport requirements generated have been considered in line with sustainable travel and investment hierarchies.</p>
<p><b>Policy 14 – Design, Quality and Place</b></p>	<p>As required by Policy 14 the siting, layout and design of the various elements have been carefully considered to ensure that the new development does not negatively impact on the surrounding landscape or the amenity of the local area.</p> <p>As set out in the submitted Design Statement, the proposals for the site have been specifically designed to ensure that the development contributes positively to the quality of the surrounding built and natural environment. The design and siting of the proposed development respects the character and amenity of its location, and will incorporate substantial areas of new landscape and planting which will act to screen the new timber yard facility but also enhance the biodiversity of the local area.</p> <p>The application proposals have therefore been designed to comply with all relevant criteria set out in Policy 14.</p>
<p><b>Policy 15 – Local Living and 20 Minute Neighbourhoods</b></p>	<p>Policy 15 is not relevant to the application proposals as it involves development in a rural location. Nonetheless, the proposed co-location of the timber yard and the house/office accords with the objectives of "local living".</p>
<p><b>Policy 16 – Quality Homes</b></p>	<p>The application proposals can be supported by part (f)iii of Policy 16 which confirms that development proposals for new homes on land not allocated for housing in the LDP will only be supported in limited circumstances, including where the proposal is consistent with policy on rural homes (see below).</p>

<b>Policy 17 – Rural Homes</b>	As we have discussed above, the application proposals can be supported by part (a)v of Policy 17 which confirms that development proposals for new homes in rural areas will be supported where the development is suitably scaled, sited and designed to be in keeping with the character of the area and the development is demonstrated to be necessary to support the sustainable management of a viable rural business and there is an essential need for a worker to live permanently at or near their place of work.
<b>Policy 18 – Infrastructure First</b>	<p>The application proposals will not have any adverse impact on infrastructure and we can confirm that the applicant is happy to agree to a developer contribution to address any identified requirements to improve the capacity of local Education and Lifelong Learning services.</p> <p>As noted in the Grounds of Appeal Statement, the applicant is also happy to agree to conditions requiring the applicant to agree suitable mitigation measures with the Council's Roads Planning Officer, such as suitable passing places or signage on the adjoining public road, and implementing the agreed measures prior to occupation of the site.</p> <p>The application proposals therefore meet the requirements of Policy 18.</p>
<b>Policy 19 – Heat and Cooling</b>	Policy 19 is not relevant as the application site is not within or adjacent to a Heat Network Zone and cannot connect to an existing heat network.
<b>Policy 20 – Blue and Green Infrastructure</b>	Policy 20 is not relevant as the application site does not form part of any existing blue and green infrastructure, and will have no impact on any blue or green infrastructure provision.
<b>Policy 21 – Play, Recreation and Sport</b>	Policy 21 is not relevant to this proposal as it does not involve the development of an existing or planned area of open space; sports facility or play area.
<b>Policy 22 – Flood Risk and Water Management</b>	<p>The application site is not at risk of flooding and will not cause flooding problems elsewhere. The application proposal have been designed to provide suitable SUDs treatment on site in accordance with Policy 22, and the only building requiring foul drainage is the temporary office and staff portakabin building which will be serviced via a waste tank which will be supplied and emptied as required. Drainage arrangements for the proposed new house and office development will be submitted at the AMSC stage and can be controlled by a condition.</p> <p>The application proposals have therefore been designed to comply with all relevant criteria set out in Policy 22.</p>
<b>Policy 23 – Health and Safety</b>	<p>As discussed above, a detailed Noise Impact Assessment has been submitted in support of this planning application. The Noise Impact Assessment includes recommended mitigation measures to ensure that there is no adverse noise impact on any residential properties, and we can confirm that the applicant would be happy to accept conditions requiring the development to be implemented in accordance with the recommendations of the submitted Noise Assessment.</p> <p>This approach confirms that this planning application complies with the requirements of part (e) of Policy 23.</p>
<b>Policy 24 – Digital Infrastructure</b>	Policy 24 is not relevant to this proposal as it does not involve the development of digital infrastructure.
<b>Policy 25 – Community Wealth Building</b>	As confirmed in the Supporting Planning Statement and Grounds of Appeal Statement the application proposals are consistent with the Council's support for forestry related enterprises which are an important part of the Scottish Borders economy.

	<p>A key benefit of the new development will be the local job creation which helps to support the local economy and helps to increase spending within communities.</p> <p>The proposed use of locally sourced timber will also ensure the use of local supply chains and services; and the creation of a new local firm.</p> <p>The application proposals can therefore be supported by Policy 25.</p>
<p><b>Policy 26 – Business and Industry</b></p>	<p>As we have explained in detail in the Grounds of Appeal Statement and the Further Written Statement dated 14 February 2023, this planning application is seeking permission for a timber yard with ancillary timber processing. It is not seeking planning permission for a business or industrial use on the site.</p> <p>To ensure this, the applicant is happy to accept conditions restricting the use of the site exclusively to timber storage with ancillary timber processing; and removing all permitted development rights to ensure that the site cannot be used for class 5 industrial or class 6 storage and distribution uses in the future. The applicant is also happy to accept a condition requiring all timber to be sourced from the Scottish Borders area.</p> <p>For these reasons, Policy 26 is not relevant to the application proposals and it should, instead be assessed against Policy 29 covering Rural Development (see below).</p>
<p><b>Policy 27 – City, Town, Local and Commercial Centres</b></p> <p><b>Policy 28 – Retail</b></p>	<p>Policies 27 and 28 are not relevant to the application proposals.</p>
<p><b>Policy 29 – Rural Development</b></p>	<p>As we have confirmed above, Part (a)iii of Policy 29 specifically confirms that: <i>“production and processing facilities for local produce and materials, for example sawmills”</i> will be supported.</p> <p>Part (d) requires development proposals in rural areas to be suitably scaled, sited and designed to be in keeping with the character of the area. They should also consider how the development will contribute towards local living and take into account the transport needs of the development as appropriate for the rural location. These matters have all been incorporated within the application proposals as discussed above.</p> <p>This planning application therefore accords with and can be supported by Policy 29.</p>
<p><b>Policy 30 – Tourism</b></p> <p><b>Policy 31 – Culture and creativity</b></p> <p><b>Policy 32 – Aquaculture</b></p> <p><b>Policy 33 – Minerals</b></p>	<p>Policies 30, 31, 32 and 33 are not relevant to the application proposals.</p>



### **Accordance with NPF4 Policies**

19. Having undertaken this detailed review of all NPF4 policies, it can be concluded that the application proposals have been designed to accord with, and are supported by all relevant policies and provisions of NPF4, and there are no material considerations that would justify a departure from these provisions.
20. We have therefore demonstrated in this Further Written Statement that the proposed development can be approved in accordance with the relevant policies of NPF4.
21. We have demonstrated that the proposal is an appropriate type, form and scale of development for this location and would sit comfortably within the surrounding area making a positive contribution to the local rural economy.
22. The detailed review of relevant planning policy therefore confirms that the proposal can be considered favourably in terms of all relevant national planning policies, and particularly the provisions of NPF4 Policies 17 and 29 which specifically cater for this type of development in this location.
23. Under the terms of Section 25 of the Town and Country Planning (Scotland) Act 1997 planning permission should therefore be granted for this proposed development.

### **Proposed Conditions**

24. As set out above, and at paragraph 92 of the Grounds of Appeal Statement, we can confirm that the applicant would be happy to accept conditions to control the proposed development. These conditions would, in our opinion, address all the relevant planning matters that have been raised by local objectors and would address all of the concerns raised by the Planning Officer, and would ensure that these matters are appropriately and suitably controlled. We would suggest the following conditions to the LRB:
  1. Restricting the use of the site to timber storage with ancillary timber processing, and no other uses.
  2. Removing all permitted development rights to ensure that the site cannot be used for class 5 industrial or class 6 storage and distribution uses in the future.
  3. Requiring all timber to be sourced from the Scottish Borders area.
  4. Restricting the number of days and hours of operation of any chipping on the application site to a total of 4 days per month between the hours of 8am and 6pm and no chipping at any time on Saturdays, Sundays or any bank holidays.

5. Restricting the delivery and occupation of the proposed dwellinghouse/office to ensure that it is only delivered after the main timber storage operations have been established on site.
6. Restricting the occupation of the dwellinghouse/office to occupants directly employed by and associated with the main timber storage operation on the site.
7. Requiring the applicant to agree suitable mitigation measures with the Council's Roads Planning Officer, such as suitable passing places or signage on the adjoining public road, and implementing the agreed measures prior to occupation of the site.
8. Requiring the development to be implemented on site in accordance with the recommendations of the submitted Arboricultural Assessment prepared by Arbor Vitae Arboriculture Ltd.
9. Requiring the development to be implemented in accordance with the recommendations of the submitted Ecological Appraisal prepared by David Dodds Associates.
10. Requiring the development to be implemented in accordance with the recommendations of the submitted Noise Assessment prepared by The Airshed.
11. Requiring the applicant to secure the implementation of a programme of archaeological work in accordance with a Written Scheme of Investigation prior to the commencement of any works on site.

### **Summary and Conclusions**

25. The inclusion of these suggested conditions would address all material planning matters raised by consultees, interested parties and the Planning Officer. It would ensure that all relevant matters are properly controlled and regulated.
26. The application proposals can therefore be supported by the relevant provisions of both the adopted LDP, through Policies ED7 and HD2, and the newly adopted NPF, through Policies 17 and 29. This allows the LRB to grant planning permission for this proposed development.
27. We would therefore respectfully request on behalf of the applicant that the LRB reviews the Planning Officer's decision and upholds this appeal and grants planning permission for the proposed development, subject to the conditions suggested above.

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**List of Appeal Documents:**

- PB01:** SBC Roads Planning Officer's updated response; email dated 4<sup>th</sup> October 2022
- PB02:** Photographs of existing timber yard at Loanhead
- PB03:** Photographs of Chipping Machines used at Loanhead
- PB04:** LDP Policy ED7 (highlighted)
- PB05:** Legal opinion from Mr Neil Collar, Partner and Planning Law specialist, Brodies Solicitors
- PB06:** Photographs showing proximity of housing adjacent to existing timber yard at Loanhead
- PB07:** Arboricultural Assessment prepared by Arbor Vitae Arboriculture Ltd
- PB08:** Tree Protection Plan prepared by Arbor Vitae Arboriculture Ltd
- PB09:** Noise Impact Assessment prepared by The Airshed
- PB10:** Ecology Appraisal prepared by David Dodds Associates
- PB11:** NPF4 Policy 29 (highlighted)
- PB12:** Scottish Government Chief Planner Letter on Transitional Arrangements for NPF4; dated 8<sup>th</sup> February 2023.