

Minutes of 06.02.2024 Pines Burn meeting at Southdean Community Hall.

Those present:

EnergieKontor (EK) Lambert Kleinjans (LK) – Pines Burn Project Manager, Lucie Blackman, (LB) – Pines Burn Assistant Project Manager, Michael Briggs (MB) –Head of Planning South Scotland, Adam Smith (AS)– Assistant Project Manager

AE Yates Dale Dixon (DD) – Contract Manager

Scottish Borders Council (SBC) Alan J Scott – (AJS) Senior Roads Planning Officer

Parliamentary Rachael Hamilton, (RH) MSP, Andrew Elton (AE) (Head of Rachael's office), Paul Seeley (PS) (caseworker)

Community Councils (CC)

Southdean CC Philip Kerr (PK), Rosalind Davies (RS)

Newcastleton CC Barbara Elborn (BE)

Denholm CC Gwen Crew (GC), Will Roberts (WR)

Upper Teviot CC Walter Douglas (WD), Claire Nowicka-Price (CN-P)

Upper Liddesdale & Hermitage CC Geoffrey Kolbe (GK)

Hobkirk CC Ron Swinton (RS), Ian Smith (IS)

Hawick CC Margaret Hogg (MH)

1. How are EnergieKontor and their contractors learning from the experience of turbine component transportation to date and incorporating those lessons as the process continues.

- 1.1. LK stated that the issues associated with both construction and delivery during the operation had been recognised at an early stage. These included traffic management and night-time deliveries. Principally, he felt that these were due to a lack of communication between the developer and SBC.
- 1.2. Measures had been put in place to improve email communication between the two parties and, in addition, communication was now open to the public to facilitate concerns that they may have. A live tracker showing progress of convoys was now also in place. This had prevented several road closures taking place but necessitated delivery schedules being replanned.
- 1.3. Another significant cause of disruption to the original schedule was the developer's interaction with the utility companies, SPEN (Scottish Power Energy Network) specifically. Lack of communication led to significant delays with SPEN taking excessive time to remove overhead power lines, needed to facilitate turbine blade transport.
- 1.4. RH asked AJS for SBC's input on the issue.

- 1.5. AJS concurred with LK that after an initial period of delays, communications had improved.
- 1.6. AJS went on to state that SBC felt the development transport delivery program to be a unique case, although SBC have always worked with contractors. He then continued to discuss a trial run that was undertaken prior to commencement of the development, adding that road closures were always part of such developments. Finally, he added that SBC cannot refuse use of roads for transportation, their role is to facilitate this ensuring that access and other users were least impacted because of any planned diversions/closures.
- 1.7. PK argued that in the case of the C29, the initial estimate of two months was optimistic, the road eventually closed for four months.
- 1.8. He went on to introduce the subject of the weather being a significant factor in the delay of the development and that this was not factored in during project planning. He continued that this variable must be included as a factor in the planning of future projects.
- 1.9. Another variable factor that failed to be incorporated into the original planning was police escorts.
- 1.10. He finished by adding that the alternatives provided for the closure of a main road were inadequate.
- 1.11. DD argued that this decision was taken by SBC, not the contractor.
- 1.12. PK opined that due to a lack of broadband in the rural areas represented by the CCs, and a lack of understanding of the developer parties as to the effects on communities by road closures, might it not be a good idea for the developer/SBC to engage with CCs at an early/earlier stage in planning to avoid some of the problems experienced by residents and businesses in the communities?
- 1.13. BE argued that although some of the mitigation measures put in place of late had been effective, this in no way made up for the permanently reduced footfall experienced by businesses impacted by diversions and closed roads.
- 1.14. She continued that due to the length of time of the road closure behaviour patterns of local people had been permanently altered. BE argued that there must be financial accountability for such impact. This particularly impacted businesses in Bonchester Bridge resulting in a local business failing and directly impacting access to/from Hawick for Newcastleton residents; no notice of the planned closures was provided enabling businesses and residents opportunity to plan alternative journeys to avoid issues.
- 1.15. PK stated the closure/ road works at the Hawick roundabout in preparation for the abnormal loads resulted in a reduction of £25k spend on one particular day as reported by Morrison supermarket, adding that best practice had not been followed.
- 1.16. BE asked for RH to provide input at policy level in this area to discuss compensatory guidelines be considered as part of the new onshore wind policy. CCs could not be expected to direct local business to the developer, this process required a process to enable direct dialogue between developers and businesses that would be directly impacted by prolonged diversions or closures.

- 1.17. RH referred to NPF4 in the context of social and economic impact assessments not being adopted and reiterated that businesses in Hawick were also adversely affected by both Pines Burn development and the Hawick Flood Protection Scheme (HFPS).
- 1.18. PK then argued that as well as the impact on the private sector there was also a knock-on effect on social care and hospitals. And that in the future this must be taken on board.
- 1.19. RH stated that there had been delays in hospital appointments due to hold ups on the A68, due to the transportation of turbine components.
- 1.20. LK responded that with greater lines of communication available to members of the public, EK had been receiving significantly more direct communication from the public.
- 1.21. WR asked how we can ensure that, prior to a transportation plan being put in place, the development plan can be subject to review and improvement? He continued that it is essential that road capacities be assessed prior to any transportation plan being adopted. Finally, he asked the developer why work was started on the development before the plan was finalised.
- 1.22. PK commented that the original transport plan did not allow for transportation of raised blades, reiterating the need for changes such as transport of turbine blades in a raised position to be incorporated into future schemes at the outset.
- 1.23. RH queried whether it may be possible for SBC to incorporate traffic/ transport criteria into a plan post application?
- 1.24. GK stated that there was no input from CCs to the traffic management plan. He asked that the views of the communities be sought at the outset in future schemes.
- 1.25. LK responded, it is not always the case that components, particularly turbine blades specified in the original planning application can be part of the final scheme; market conditions change; legislative framework/government incentives etc. may change which will necessitate use of different components to those specified in the original application. A reduction in government subsidy had forced the developer to use a larger turbine spec than originally planned to change the Traffic Management Plan (TMP).
- 1.26. PK argued that the local communities had objected about had been approved but the changes to the route necessitated by the increased size of the turbines had not. PK stated that this needed to be brought to the attention of the SG for future projects.
- 1.27. GC stated that the original route had never been viable, and it was disingenuous for the developer to argue the case.
- 1.28. AS stated, that from the outset, not all details had been known. SG and SBC had approved plans in principle, but few roads were genuinely suitable, and this element could not be determined until the project began.
- 1.29. CCs commented that the road traffic plan should be included in any planning determination given the degree of change necessitated post approval to provide the access necessary to transport the blades. Impacted communities were totally unaware which roads were to be closed until this happened and were not informed by

the developer or SBC. When explanations were sought by them it was apparent that the TMP had not been formally approved by SBC.

- 1.30. RH asked what the process was for retrospectively amending the TMP when scheme components were altered.
- 1.31. PK commented that communication with local communities had failed in this regard.
- 1.32. LK agreed stating that information pertaining to road closures was communicated to SBC but that the authority failed to pass this information on to the CCs; the developer took this responsibility now communicating directly to the CCs and via its social media channels.
- 1.33. AJS argued that there is no legislative requirement for the SBC to consult with the CCs on the Traffic Management Plan.
- 1.34. BE stated that communities were not informed of road closures or consulted in any regard as part of the TMP process and that the TMP only emerged post road closures. The disregard shown to the communities by SBC during this process was unacceptable, it might be the formal position required of SBC but morally it was unacceptable.
- 1.35. AJS stated, that CC comments would be taken on board for future projects.
- 1.36. LK argued that as all pre-conditions had been met, they were entitled to commence operations.
- 1.37. GK argued to the contrary, reading text directly from policy 11 from NPF4 citing the feedback from Kirstin Keyes of Scottish Government Energy Consent Unit from email correspondence between ULHCC and the unit¹ which indicates a change of policy providing a substantial change of position on the consideration of community benefit in Policy 11c, which states, *"...proposals will only be supported where they maximise net economic impact including local community socioeconomic benefits such as employment, associated business and supply chain opportunities"*

Consenting authorities are now required to assess any Application against the Policy 11c to determine if "net economic impact" has been "maximised". ULHCC argued, and the Scottish Government has agreed, that community benefit is to be considered as part of that "net economic impact".
- 1.38. RH argued that a lesson for the future may be a better definition of work start times/dates.
- 1.39. GK stated it was a SG condition that work would not start before the specified date and that the developer was breaking the law, arguing that SBC could take the developer to court, but they were not prepared to spend funds on taking EK to court.
- 1.40. BE asked if CCs could take the developer to court. LK opined that only SBC could take that action. GK quoted an example of Dumfries & Galloway taking a windfarm developer to court.²

¹ Full copy of email text included in appendix.

² Copy of D&G reference ref Community Windpower prosecution in appendix

- 1.41. RH asked AJS about TMPs in the context of windfarms. AJS replied that the Planning Officer would be expected to ask engineers about the condition of the roads affected by the development. It's not guaranteed that the engineers would know the condition of all roads at the time of the TMP application.
- 1.42. CN-P opined that none of the roads in the Borders are suitable for traffic such as that required during the construction of a windfarm.
- 1.43. AJS remarked that the council initially refused the application for the wind farm but were effectively overruled by the SG. The approval limited the number of turbines that could form the development. PK commented that the original application highlighted transport as an issue.
- 1.44. BE asked whether the developer pays SBC or SG a developer's contribution as is the case for other major development impacting local services and communities?
- 1.45. AS responded that the developer does not pay. BE asked why not, as the changes in the TMP have had a real impact. AS stated, that the condition surveys and the planned mitigation by the developer (repair work on roads damaged by transport to the development) are agreed between SBC and the developer. BE asked as to how the process of establishing the extent of damage to the roads is tracked. AS responded that surveys are carried out prior to operations commencing, during the project timeframe, and after completion. With this data discussion is held and an agreement reached regarding a mitigation figure.
- 1.46. LK stated that the process was about trying to find consensus, but the matter was not straightforward as other factors such as weather and regular wear and tear must also be considered.
- 1.47. Another CC member asked how, for example, could the damage sustained by roads in Hawick be differentiated between the Flood Protection Scheme and the Wind Farm.
- 1.48. AS reiterated that agreement would be reached through negotiation, as with all developments.
- 1.49. GC asked if all the drivers of development associated vehicles are duty bound to stick to the roads delineated for the purpose of component transportation as it was her experience that some would not. LK answered that they should, as specified in the original plan, but agreed that some smaller vehicles might deviate from the prescribed routes on the return journey. RH asked LK if this could be followed up.
- 1.50. BE asked LK if EK would consider the adoption of new technology to monitor traffic movements, to avoid dispute. RH asked EK if they would take this on board.

2. **Estimation of Completion date for the Pines Burn Project.**

- 2.1. LK stated that although the date is weather dependent EK do expect the project to be completed early June with all deliveries completed by the end of March. This is in line with the revised plan. Grid Connection date expected to be Q2 2024.
- 2.2. AS asked the CC leaders what they would like to see changed in the TMP, based on their experience of how this project had progressed. PK stated early cooperation between all parties much earlier in the process, added this recommendation will be

communicated to SG. BE asked if AJS's request for feedback via email could be distributed to all CCs to enable this to be provided.

3. **Community Benefit** (SBC and AE Yates left the meeting).

- 3.1. **Index linking** LK referred to correspondence between the parties concerning the distribution of the community benefit, its calculation and index linked inflation proofing as well as aspects of the contribution to Borders College.
- 3.2. PK asked for confirmation that the same inflation rate/ method of calculation would be used for all the different elements of the CB. LK agreed that it would be
- 3.3. **Governing entity change** BE updated all on how Teviot & Liddesdale CC's, (and those from wider benefiting area partnership areas outside of the Pines burn catchment) were all working collaboratively. The previous SCIO entity drafted in 2019 was now superseded to enable CCs within any governing entity to participate in share ownership options if this was offered by developers and accepted.
- 3.4. Capacity and resource amongst benefiting CCs was limited, it was important to the communities that all potential locally planned wind farm developments could be incorporated into a model that provided flexibility to satisfy all the development within the T&L catchment.
- 3.5. This meant that a new governing model call a Charity Limited by Guarantee (CLG) was the preferred entity to be adopted by CCs. A CLG had the capacity to host a trading arm within the charitable structure to accommodate shared ownership if participated CCs wished to progress share ownership going forward with any developer.
- 3.6. The legal entity provided governance for the charitable funds awarded to be administered by Trustees (represented by 1 x CC from the benefiting communities + 1 x EK + 1 x Capital Dynamics). The commercial division (likely to be a Community Interest Company (CIC) would have the necessary governance to enable it to report like any normal commercial entity to Companies House/HMRC. Any dividends awarded to the participating CCs in the CIC would be ringfenced and awarded to the charitable arm for shared ownership participation CCs to benefit.
- 3.7. This was a new model and as share ownership was in its relative infancy it was important that any entity provided for this eventuality in the future given that the legal structure was valid for the life of the development.
- 3.8. **Legal advice/governance** BE advised that CARES/Local Energy Scotland had recently awarded grant funding to Newcastleton Community Trust who were nominated by all the participating CCs to act on behalf of them to seek legal guidance on structure; this template would be adopted for each developer as appropriate. BE would share the template with EK once this was concluded (expected draft paperwork by end of Feb). EK agreed to review the proposal in this context.
- 3.9. Payments under this new approach as a charitable entity require that any benefit be administered community wide, it was not possible therefore for CCs to administrate the Borders College payment, nor the Householder payments previously requested by EK.

- 3.10. EK agreed that both BC and the householder payment determined the balance of CBF available to be awarded, this detail was still required to be advised to the CC's going forward but EK confirmed that this would be administered by them directly.
- 3.11. PK advised that the details of the new CLG which incorporated share ownership options model would be shared as part of on-going discussions with SG. BE stated that the model being developed shall be a template for future use.
- 3.12. LK asked if the new approach would be in place by June, BE confirmed it will be.
- 3.13. EK confirmed Capital Dynamics would sign the contract.
- 3.14. BE confirmed that the previously agreed protocols for distribution allocation and expenditure criteria remained.
- 3.15. **£ pr MW's v turbine basis** BE explained that the proposed £ pr turbine was contrary to best practise which was to use MW's generated and that as a principle all participating CCs (and EK) had agreed previously to adopt these; new onshore guidance referenced £ pr MWs as the basis of negotiations. BE stated that it was not possible for CCs to accept EK's proposed terms without breaking the policy which wasn't acceptable to the CC's.
- 3.16. EK agreed they would adapt the offer to reflect the granted sums to the £ pr MW model using the installed capacity (which was fixed) as the new basis to move forward. CCs would amend the paperwork accordingly based on 36MW installed capacity using the base of £87.5k less the sums awarded to BC and householder payments.
- 3.17. It was agreed that the same principle must apply for Phase 2 of the development.
- 3.18. **Proportioning the funds** CCs argued they had been unfairly penalised because of the revised householder payments list and Borders College as stated in the revised proposal received Dec 2023. This allocates 44% of the annual sum to be ringfenced to both BC and householder payments not 36% previously allocated to both.
- 3.19. It was established that EK had not notified any householder of the proposed sums so there was scope to amend this aspect back to the originally agreed basis of 36% equating to £7.3k annually until phase 2. The CCs would adjust and reflect in the new paperwork being drafted.
- 3.20. The previous indexation issues were resolved with receipt of an email prior to the meetings. This change would also be incorporated in the new paperwork.
- 3.21. There was recognition that the details for phase 2 of the site, if this was granted, would mirror the principles of phase 1 as the degree of impact to householders was the same. Phase 2 CBF would be provided for in the revised proposal and only effected if this became operational in the future.
- 3.22. **Business compensation** BE then asked about the possibility of compensation from the developer because of the development's impact upon local businesses, requesting how business owners can contact EK in this regard. LK countered that there was no mechanism for compensation, and that this was no different than for

any other development. LK stated that he was aware of the impact on business and had been in direct communication with numerous affected businesses.

- 3.23. **Ref to policy 11 from NPF 4** was again referred to by the communities, who expected this to be addressed as part of the phase 2 proposals. BE reiterated her desire that some form of compensation to local business owners is due, and that there is a continuing high level of angst amongst the affected communities.
- 3.24. PK reminded all that the time taken by the project to reach completion for the original timeline was 20 days for the first 8 blades as opposed to the 106 days this is taken, with further delays for the remaining blades expected.
- 3.25. This protracted impact required further acknowledgement by decision makers that whilst this wholly benefited the developer it caused havoc and chaos of unquantifiable proportions to road users, businesses, and communities; unforeseen costs such as the estimated £25k per day fee for the cranes used in the transportation of turbine blades. It was argued that all sides have suffered because of poor planning and management from the outset.
- 3.26. LK countered that much of the delay in the project has been due to issues with Scottish Power and BT delays in removing overhead power and communication lines.
- 3.27. BE stated that hard lessons had been learnt during this project and that it is the communities that have been paying the price.
- 3.28. GK again reiterated to LK referring to **section 11c of NPF4** as this affected all developers; Energy Consents Unit had provided a written response to GK following his challenge to the interpretation of the policy which was confirmed in email to him on November 3rd from Kirstin Keyes which states, "*I have recorded your additional views on ... community benefits, which **will be taken into account at the time of determination**, should an application be forthcoming.*"
- 3.29. This marks a substantial change of position on the consideration of community benefit in Policy 11c, which states, "*...proposals will only be supported where they maximise net economic impact including local community socio-economic benefits such as employment, associated business and supply chain opportunities*".
- 3.30. Consenting authorities are now required to assess any application against the Policy 11c to determine if "net economic impact" has been "maximised". CC's have argued, and the Scottish Government has agreed, that community benefit is to be considered as part of that "net economic impact". It also arguable that business interruption compensation should be considered as part of the *net economic impact*.
- 3.31. RH drew the meeting to a close, stated that the issue of compensation in a case like this should be discussed at Holyrood.

Meeting closed.

Specific Actions.

LK to enforce, as specified in the original plan, that all vehicles associated with the development use the prescribed routes on the return journey from site.

EK to consider the adoption of new technology to monitor traffic movements in the future.

AJS's request for feedback via email to be distributed to all CCs to enable this to be provided.

BE to share Newcastleton Community Trust template with EK once this was concluded (expected draft paperwork by end of Feb). EK agreed to review the proposal in this context.

APPENDIX 1

Copy of relevant text relating to **section 11c of NPF4 referred to in the meeting between GK of ULHCC and Kirsten Keyes of ECU:**

Kirstin Keyes on **17th October 2023** on the matter of community benefit, said:

Finally, you have raised concerns regarding the community benefit. Please note that community benefits, such as financial donations, are voluntary initiatives undertaken by the developer and good practice guidance is available at [Community benefits from onshore renewable energy developments - gov.scot](http://www.gov.scot) (www.gov.scot)

I can confirm that community benefits are not a material consideration in the planning process and do not affect the decision on whether to approve or refuse an application for consent. Matters pertaining to community benefits schemes are therefore not considered in this scoping opinion and do not require to be included in the application for the proposed Development.

GK replied on the 24th of October:

Your state that community benefit is not a material consideration in a planning Application. You cite the Scottish Government's "Community benefits from onshore renewable energy developments" document, but this dates from 2019, prior to National Planning Framework 4 being adopted. NPF4 states, "proposals will only be supported where they maximise net economic impact including local community socioeconomic benefits such as employment, associated business and supply chain opportunities" (Policy 11.c).

It is not rational to argue that when the consenting authority assesses whether the developer has "maximised... socioeconomic benefits", as it must now do under NPF4, it does not include in its assessment any proposed community benefit. There is currently no legal provision that community benefit should be excluded from consideration in Policy 11.c of NPF4.

In this case, the Developer has stated that it will provide community benefit at a given rate and under given conditions. It is to be expected that when the consenting authority considers any future Application against Policy 11.c of NPF4, it should be satisfied that the community benefit will be proportionate to overall expected revenues, delivered as promised to local

interests who can control it, and tailored in such a way that maximises its potential effect. We have set out reasonable provisions which will help achieve these goals. We hope you will consider including them in the ECU Scoping Response.

Kirstin Keyes replied on November 3rd,

I have recorded your additional views regarding the environment, the development and community benefits, which will be taken into account at the time of determination, should an application be forthcoming.

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PLEASE NOTE that there is now an important change of position in this last statement. In her email of 17th October, Kirstin Keyes said, “.....*community benefits are **not a material consideration in the planning process** and do not affect the decision on whether to approve or refuse an application for consent.*”

However, in the email of November 3rd Kirstin Keyes stated, “*I have recorded your additional views on ... community benefits, which **will be taken into account at the time of determination**, should an application be forthcoming.*”

This marks a substantial change of position on the consideration of community benefit in Policy 11c, which states, “...*proposals will only be supported where they maximise net economic impact including local community socioeconomic benefits such as employment, associated business and supply chain opportunities*”.

Consenting authorities are now required to assess any Application against the Policy 11c to determine if “net economic impact” has been “maximised”. We have argued, and the Scottish Government has agreed, that community benefit is to be considered as part of that “net economic impact”.

It also arguable that business interruption compensation should be considered as part of the “net economic impact”

APPENDIX 2

Extract from D&G Planning ref **compliance on monitoring of environment projects subject to planning consents**, purpose and background have been included. Point 9 relates to **Sneddon Law Wind Farm by Community Windpower:**

EAST AYRSHIRE COUNCIL PLANNING COMMITTEE /3 NOVEMBER 2017

COMPLIANCE MONITORING UPDATE OF MAJOR DEVELOPMENTS IN EAST AYRSHIRE

Report by Head of Planning and Economic Development: Economy and Skills

PURPOSE OF REPORT 1. 2. 3. The Purpose of the Report is to provide an update to the Planning Committee in respect of compliance monitoring activity relating to environmental projects which are subject to planning consents and comprising the following development types:- opencast coal, quarries, landfill, onshore windfarms and the electrical interconnector between the period July and September 2017.

BACKGROUND The Independent Review of the Regulation of Open Cast Coal Operations in East Ayrshire included as one of its recommendations that quarterly reports should be submitted to the Planning Committee recording progress of mining activity and restoration of the particular sites and complexes. At the Planning Committee on 27 June 2014, it was agreed that the remit of this quarterly report be widened to include the other environmental

development subject to compliance monitoring including quarries, landfills, onshore wind farms and the electrical interconnector. At the Planning Committee on the 22nd of April 2016, it was agreed that the remit of this Quarterly Report be expanded to include information on single turbine developments.

Sneddon Law 9.

Conditional Planning Consent was granted for a 15 turbine windfarm under planning ref: 13/0198/PP. Condition 11 of this consent required the submission of a decommissioning and Restoration Bond for the site. A submission was made to East Ayrshire Council by the developer on 23 November 2015 under ref: 15/0883/AMCPP. This submission was refused and subsequently appealed by Community Windpower Ltd to the Scottish Government Department of Planning and Environmental Appeals, Appeal Ref: PPA-190-2058. An appeal decision was issued by DPEA on 23 February 2017 discharging this condition and setting the quantum of the restoration bond at £1,831,000. A bond in this amount has been submitted to the Council by Community Windpower Ltd and has been registered by colleagues in Legal Services against the site.

End