

List of Enclosures – Written Submissions relating to Item 5

Important Note:- the previous papers on this item were submitted to the meeting of the Planning Review Committee on 9 June 2014. These papers are available to view on the Falkirk Council website at

<http://www.falkirk.gov.uk/services/council-democracy/councillors-decision-making/committees/planning-local-review-body>

Written submissions submitted in accordance with the request of the Planning Review Committee on 9 June 2014.

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Enquiries to: Antonia Sobieraj
 Direct Dial: (01324) 501277
 Email – Antonia.sobieraj@falkirk.gov.uk
 Our Ref: AS
 Date: 1 July 2014



Falkirk Council
Chief Executive Office
Governance

Anna Perks
 Biodiversity Officer
 Abbotsford House

Dear Ms Perks,

LOCAL PLANNING REVIEW COMMITTEE

PLANNING APPLICATION P/13/0513/FUL ERECTION OF DETACHED DWELLINGHOUSE AND DETACHED DOMESTIC DOUBLE GARAGE (PLOT 1) AT LAND TO THE SOUTH EAST OF BYWAYS, GLEN ROAD, TORWOOD

PLANNING APPLICATION P/13/0514/FUL ERECTION OF DETACHED DWELLINGHOUSE AND DETACHED DOMESTIC DOUBLE GARAGE (PLOT 2) AT LAND TO THE SOUTH EAST OF BYWAYS, GLEN ROAD, TORWOOD

PLANNING APPLICATION P/13/0509/FUL ERECTION OF DETACHED DWELLINGHOUSE AND DETACHED DOMESTIC DOUBLE GARAGE (PLOT 3) AT LAND TO THE SOUTH EAST OF BYWAYS, GLEN ROAD, TORWOOD

NOTICE OF REQUEST FOR WRITTEN SUBMISSIONS

The Planning Review Committee met on 9 June 2014 to reconsider the above applications for review. After further discussion, the Committee determined that they still did not have enough information to determine the application, and requested, in accordance with Regulation 15 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013 ("the 2013 Regulations"), that further information by way of written submissions be provided by you.

The information requested from the Council's Biodiversity Officer is as follows:-

- (a) further information and your opinion on the mitigation approaches proposed in the applicant's agent's letter dated 8th May 2014 (copy enclosed).

As the Committee gave a period of 14 days for the information to be supplied, I would be grateful if you could provide response by **Tuesday 15 July 2014**. A copy of this information will then be provided to the applicant who will then have 14 days in which to respond.

Chief Governance Officer: Rose Mary Glackin

Municipal Buildings
 Falkirk FK1 5RS
 LP 1 Falkirk-2

www.falkirk.gov.uk

Yours sincerely,

Committee Services Officer
for Chief Governance Officer



Falkirk Council

*Chief Executive Office
Governance*

Enquiries to: Antonia Sobieraj
Direct Dial: (01324) 501277
Email – Antonia.sobieraj@falkirk.gov.uk
Our Ref: AS
Date: 1 July 2014

1st Class Mail

Scottish Ministers
Department of Planning and Environmental Appeals
4 The Courtyard
Business Park
Callendar Road
Falkirk FK1 1XR

Dear Sir/Madam,

LOCAL PLANNING REVIEW COMMITTEE

PLANNING APPLICATION P/13/0513/FUL ERECTION OF DETACHED DWELLINGHOUSE AND DETACHED DOMESTIC DOUBLE GARAGE (PLOT 1) AT LAND TO THE SOUTH EAST OF BYWAYS, GLEN ROAD, TORWOOD

PLANNING APPLICATION P/13/0514/FUL ERECTION OF DETACHED DWELLINGHOUSE AND DETACHED DOMESTIC DOUBLE GARAGE (PLOT 2) AT LAND TO THE SOUTH EAST OF BYWAYS, GLEN ROAD, TORWOOD

PLANNING APPLICATION P/13/0509/FUL ERECTION OF DETACHED DWELLINGHOUSE AND DETACHED DOMESTIC DOUBLE GARAGE (PLOT 3) AT LAND TO THE SOUTH EAST OF BYWAYS, GLEN ROAD, TORWOOD

NOTICE OF REQUEST FOR WRITTEN SUBMISSIONS

The Council's Planning Review Committee met on 9 June 2014 to consider the above applications for review. The application sites are currently subject to an enforcement notice issued by the Forestry Commission in respect of tree felling which has taken place on the site. The agent for the applicant's has submitted an appeal to Scottish Ministers against the enforcement.

At the meeting of the Planning Review Committee held on 9 June the Committee determined that they still did not have enough information to determine the application, and requested, in accordance with Regulation 15 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013 ("the 2013 Regulations"), that further information by way of written submissions be provided by the Scottish Ministers.

Chief Governance Officer: Rose Mary Glackin

Municipal Buildings
Falkirk FK1 5RS
LP 1 Falkirk-2

www.falkirk.gov.uk

The information requested from the Scottish Ministers is as follows:-

- (a) information on the timescales for a decision in relation to the appeal against the enforcement notice issued by the Forestry Commission in respect of the tree felling on the site.

As the Committee gave a period of 14 days for the information to be supplied, I would be grateful if you could provide response by **Wednesday 16 July 2014**. A copy of this information will then be provided to the applicant who will then have 14 days in which to respond.

I look forward to receiving your response, but in the meantime if you require any further information or clarification, please get in touch.

Yours faithfully,

Committee Services Officer
for Chief Governance Officer



Falkirk Council

*Chief Executive Office
Governance*

Enquiries to: Antonia Sobieraj
Direct Dial: (01324) 501277
Email – Antonia.sobieraj@falkirk.gov.uk
Our Ref: AS
Date: 1 July 2014

1st Class Mail

Forestry Commission Scotland
Central Scotland Conservancy
Bothwell House
Hamilton Business Park
Caird Park
Hamilton
ML3 0QA

Dear Sir/Madam,

LOCAL PLANNING REVIEW COMMITTEE

PLANNING APPLICATION P/13/0513/FUL ERECTION OF DETACHED DWELLINGHOUSE AND DETACHED DOMESTIC DOUBLE GARAGE (PLOT 1) AT LAND TO THE SOUTH EAST OF BYWAYS, GLEN ROAD, TORWOOD

PLANNING APPLICATION P/13/0514/FUL ERECTION OF DETACHED DWELLINGHOUSE AND DETACHED DOMESTIC DOUBLE GARAGE (PLOT 2) AT LAND TO THE SOUTH EAST OF BYWAYS, GLEN ROAD, TORWOOD

PLANNING APPLICATION P/13/0509/FUL ERECTION OF DETACHED DWELLINGHOUSE AND DETACHED DOMESTIC DOUBLE GARAGE (PLOT 3) AT LAND TO THE SOUTH EAST OF BYWAYS, GLEN ROAD, TORWOOD

NOTICE OF REQUEST FOR WRITTEN SUBMISSIONS

The Council's Planning Review Committee met on 9 June 2014 to consider the above applications for review to which the Forestry Commission had submitted 2 separate letters of objection. The Forestry Commission had also been asked to respond to a request for written submissions and had responded with a response from Mr Neil White (copy attached). Following further discussion, the Committee determined that they still did not have enough information to determine the application, and requested, in accordance with Regulation 15 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013 ("the 2013 Regulations"), that further information by way of written submissions be provided by the Forestry Commission.

Chief Governance Officer: Rose Mary Glackin

Municipal Buildings
Falkirk FK1 5RS
LP 1 Falkirk-2

www.falkirk.gov.uk

The information requested from the Forestry Commission is as follows:-

- (a) information in relation to the mitigation approaches proposed in the applicant's agent's letter dated 8th May 2014 (copy attached), and
- (b) any information on the timescales relating to the enforcement notice which has been issued in respect of the tree felling on the site.

The Committee also requested that the written submissions requested from the Forestry Commission should be provided by an officer who has not had any prior involvement in the planning application process or the tree felling enforcement process. This is in line with the Council's own approach when it is requested to provide information to a Planning Review Committee.

As the Committee gave a period of 14 days for the information to be supplied, I would be grateful if you could provide response by **Wednesday 16 July 2014**. A copy of this information will then be provided to the applicant who will then have 14 days in which to respond.

I look forward to receiving your response, but in the meantime if you require any further information or clarification, please get in touch.

Yours faithfully,

Committee Services Officer
for Chief Governance Officer



Falkirk Council

*Chief Executive Office
Governance*

Enquiries to: Antonia Sobieraj
Direct Dial: (01324) 501277
Email – Antonia.sobieraj@falkirk.gov.uk
Our Ref: AS
Date: 1 July 2014

Director of Development Services
Abbotsford House

Dear Mrs Geisler,

LOCAL PLANNING REVIEW COMMITTEE

PLANNING APPLICATION P/13/0513/FUL ERECTION OF DETACHED DWELLINGHOUSE AND DETACHED DOMESTIC DOUBLE GARAGE (PLOT 1) AT LAND TO THE SOUTH EAST OF BYWAYS, GLEN ROAD, TORWOOD

PLANNING APPLICATION P/13/0514/FUL ERECTION OF DETACHED DWELLINGHOUSE AND DETACHED DOMESTIC DOUBLE GARAGE (PLOT 2) AT LAND TO THE SOUTH EAST OF BYWAYS, GLEN ROAD, TORWOOD

PLANNING APPLICATION P/13/0509/FUL ERECTION OF DETACHED DWELLINGHOUSE AND DETACHED DOMESTIC DOUBLE GARAGE (PLOT 3) AT LAND TO THE SOUTH EAST OF BYWAYS, GLEN ROAD, TORWOOD

NOTICE OF REQUEST FOR WRITTEN SUBMISSIONS

The Planning Review Committee met on 9 June 2014 to reconsider the above applications for review. After further discussion, the Committee determined that they still did not have enough information to determine the application, and requested, in accordance with Regulation 15 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013 ("the 2013 Regulations"), that further information by way of written submissions be provided by you.

The information requested from the Director of Development Services is as follows:-

- (a) a screening opinion as to whether or not Environmental Impact Assessment is required for the developments in terms of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011.

Chief Governance Officer: Rose Mary Glackin

Municipal Buildings
Falkirk FK1 5RS
LP 1 Falkirk-2

www.falkirk.gov.uk

As the Committee gave a period of 14 days for the information to be supplied, I would be grateful if you could provide response by **Wednesday 16 July 2014**. A copy of this information will then be provided to the applicant who will then have 14 days in which to respond.

Yours sincerely,

Committee Services Officer
for Chief Governance Officer

Directorate for Planning and Environmental Appeals

Telephone: 01324 696462 Fax: 01324 696444
E-mail: Scott.Mackenzie@scot.gov.uk

Ms A Sobieraj
Committee Services Officer
Falkirk Council
Municipal Buildings
FALKIRK
FK1 5RS



Your refs: P/13/0513/FUL; P/13/0514 and P/13/0509

Our ref: TENA-009-1; TENA-009-2 and TENA-009-3

8 July 2014

Dear Ms Sobieraj

**ENVIRONMENTAL IMPACT ASSESSMENT (FORESTRY)(SCOTLAND)
REGULATIONS 1999
APPEALS MADE AGAINST FORESTRY COMMISSION FOR THE SERVING OF
NOTICES UNDER REGULATION 20**

LAND ADJACENT TO GLEN ROAD, TORWOOD, LARBERT (PLOTS 1, 2 AND 3)

Thank you for your letter dated 1 July seeking progress of our appeals with regard to the enforcement notices served by the Forestry Commission on:

- Mr Roy Mitchell, Beechcroft, Carronvale Road, Larbert;
- Mr Peter Hoggan, Longcroft House, Glasgow Road, Longcroft, Bonnybridge;
and
- Mr Allan Gilmour, 13 Braemar Gardens, Dunnipace.

I can confirm the reporter, Katrina Rice BSc(Hons) DipTP MRTPI is holding a hearing on 9 July 2014 to examine the appeals further. Ms Rice will then proceed to complete her report for Scottish Ministers' consideration by the target date of 11 September 2014. On receipt of the reporter's report, Scottish Ministers will proceed to issue their decision as quickly as possible thereafter.

Progress on the cases can be followed on DPEA's website at www.dpea.scotland.gov.uk. On entering the website, click on the "simple search" tab and enter the reference number TENA-009-1 and you will find any documents relating to these cases.

I trust this information proves useful. Please do not hesitate to contact me if you require any further information.



Yours sincerely

Scott Mackenzie

SCOTT MACKENZIE

Case Officer

Directorate for Planning and Environmental Appeals

 Follow @DPEAScotland

PLANNING & TRANSPORTATION SERVICES

Enquiries to: Anna Perks
Tel No: 01324 504863
Fax No: 01324 504709

Antonia Sobieraj
Committee Services Officer
Falkirk Council

Our Ref:
Your Ref:

10th July 2014

Dear Ms Sobieraj

Re: P/13/0513/FUL, P/13/0514/FUL, and P/13/0509/FUL Land to the south east of Byways, Glen Road, Torwood. - Request from the review panel for further written submissions

The following is my response to the review panel's request for "further information and my opinion on the mitigation approaches proposed in the applicant's agent's letter dated 8th May 2014".

1. Long-established plantation woodland

My previous response stated that:

"The development of this site would result in the permanent loss of an important habitat (i.e. long-established woodland) including its soils and seedbank. Given the hundred plus years required for such long established habitats to form there is little scope to adequately mitigate for the loss of this site to development. The entire site is identified as long established woodland and a significant proportion of the site was under tree cover prior to felling in 2013. The development of the three plots would necessarily result in the destruction of a significant area of long established woodland soils and seedbank, and also significantly impact on the area available for replanting (as currently required by the Forestry Commission)." My conclusion that the loss of the long established woodland site cannot be adequately mitigated still stands.

The ancient and long established woodland inventory shows the entire area of Whinnie Muir as long established woodland of plantation origin, albeit much of it now covered in conifer plantation. While reinstatement of some of this woodland to native broadleaves would be beneficial for wildlife, it will not compensate for the loss in area of long established woodland. The overall area designated as long established woodland will still be reduced if these development proposals proceed.

2. Broadleaved Woodland – Local Biodiversity Action Plan priority habitat

The on-site mitigation that was previously detailed by the landscape officer, and is proposed by the applicant's agent (in suggestion (a)), remains essential on landscape grounds. However, these on-site mitigation proposals do not meet the requirements I suggested in my previous response outlining measures which would help to limit the ecological impact of the proposals, namely:

- “replant as much woodland cover as possible within the plots, creating strips of native woodland of at least 20m in depth”
- “safeguard the woodland soils within the replanting areas”

Creation of native, broadleaved woodland elsewhere within Whinnie Muir will not mitigate for the loss of long-established woodland (see above). However, it could compensate for the more general loss of broadleaved woodland habitat that would result if this development went ahead.

The proposal to replace conifer woodland at Whinnie Muir with native broadleaved woodland over an area twice the size of the 3 proposed development sites (suggestion (b)) could recreate a viable area of broadleaved woodland of benefit to local wildlife. The design, exact location and long-term management of this area of woodland would be critical to ensure that its value for wildlife was maximised.

Yours sincerely,

A black rectangular redaction box covering the signature of Anna Perks.

Anna Perks
Falkirk Area Biodiversity Officer

From: vivian, brent
Sent: 14 July 2014 16:22
To: Sobieraj, Antonia
Cc: henderson, iain; Whittle, Bernard; Campbell, Donald
Subject: FW: planning applications P/13/0513/FUL, P/13/0514/FUL and P/13/0509/FUL - Glen Road, Torwood

Attachments: Glen Road Housing - Screening Report.doc
Tonia

I refer to your letter to Mrs Geisler dated 1 July 2014 in relation to the above matter. In response, please see the attached EIA screening opinion.

Regards
Brent

From: Shaw, Alistair
Sent: 14 July 2014 14:46
To: vivian, brent
Cc: Harris, Phillip; Perks, Anna
Subject: RE: planning applications P/13/0513/FUL, P/13/0514/FUL and P/13/0509/FUL - Glen Road, Torwood

Brent,

Please find attached screening opinion for the above planning applications, as requested. You will see that, for the purposes of EIA screening, I have considered them to be a single proposal, which qualifies them as Schedule 2 (above 0.5 hectare). However, the conclusion is that the proposal is not likely to have significant environment effects and that EIA is therefore not required.

Regards,
Alistair

Alistair Shaw
Development Plan Co-ordinator
Falkirk Council Development Services
Abbotsford House
Falkirk
FK2 7YZ
Tel: 01324 504739
Fax: 01324 504709

Customer Survey – How are we doing?

We would welcome your feedback on your experience in dealing with the Development Plan Team. Whether you've had a good or bad experience or could think of ways in which our service could be improved, please let us know by completing our [Customer Survey](#).

From: vivian, brent
Sent: 03 July 2014 14:08
To: Shaw, Alistair
Subject: planning applications P/13/0513/FUL, P/13/0514/FUL and P/13/0509/FUL - Glen Road, Torwood

Alistair

The above planning applications are subject to consideration by the Planning Review Committee. The Committee has requested:-

'A screening opinion as to whether or not an Environmental Impact Assessment is required for the developments in terms of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011'.

I would be grateful if you could arrange for this to be undertaken. Committee Services have requested a response to them by Wednesday 16 July.

Phillip and Anna have been involved so far in providing further information to the Committee. One of the key issues is the loss of ancient woodland at the sites.

Regards
Brent

The link below is for the Development Management Survey which we would be grateful if you would complete and submit.

https://www.surveymonkey.com/s/dev_management

Thank you.

Brent Vivian
Senior Planning Officer
Telephone Number 01324 504935

For information, the undernoted is the direct link to the Scottish Government eplanning website
<https://eplanning.scotland.gov.uk/WAM>

2012 Scottish Awards for Quality in Planning - Falkirk Greenspace Initiative, (Overall Winner)

<http://www.scotland.gov.uk/Topics/Built-Environment/planning/National-Planning-Policy/awards>

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The views and opinions expressed in this e-mail are the senders own and do not necessarily represent the views and opinions of Falkirk Council.

**The Town and Country Planning (Environmental Impact Assessment)
(Scotland) Regulations 2011
Screening Opinion**

Development:	Erection of 3 Detached Dwellinghouses with Detached Double Garages
Location:	Land to the South East of Byways Glen Road Torwood
Reference No:	P/13/0509/FUL; P/13/0513/FUL; P/13/0514/FUL
Reason for classification as Schedule 2 Development (see Schedule 2 of EIA Regulations) Description of development from Column 1: 10. Infrastructure projects (b) Urban development projects, including the construction of shopping centres and car parks, sports stadiums, leisure centres and multiplex cinemas; Applicable Thresholds/Criteria from Column 2 The area of works exceeds 0.5 hectare. The proposal has been submitted as three separate applications. Although individually these are below the threshold, for the purposes of EIA, should be seen collectively as a single proposal for 3 houses.	
Consideration of Whether Development has Significant Environmental Effects (see Schedule 3 of EIA Regulations) <u>1. Characteristics of development</u> (having regard to: size; cumulative effects; use of natural resources; production of waste; pollution and nuisances; risk of accidents) The proposal is relatively limited in extent, extending to around 1 hectare. It is currently a greenfield site on the edge of Torwood village, and part of a wider mixed woodland which envelopes the village. Semi-mature naturally regenerated trees on the north east boundary to the road and naturally regenerated younger trees on the site have been removed. The three proposed houses are 1½ storey with large footprint. They will have some landscape impact on the setting of the village, but the visual impact will be very localised and restricted to a short section of Glen Road. There will be minor short term construction-related impacts on adjacent residential properties. <u>2. Location of development</u> (having regard to: existing land use; relative abundance, quality and regenerative capacity of natural resources in the area; absorption capacity of the natural environment; areas in which the environmental quality standards laid down in community legislation have already been exceeded; densely populated areas; landscapes of historical, cultural or archaeological significance) The site is part of an area listed as a long established woodland of plantation origin in SNH's Inventory of Ancient, Long Established and Semi-Natural Woodland. Although the area was cleared of trees in 2013, and so the proposal does not involve further	

loss of trees per se, the site remains part of the woodland, and is of local ecological value given the presence of woodland soils and seed bank developed over a long period. If left, it would regenerate again into broadleaved woodland habitat, which is a priority habitat in the Local Biodiversity Action Plan.

3. Characteristics of the potential impact

(having regard to: the extent of the impact; the transfrontier nature of the impact; the magnitude and complexity of the impact; the probability of the impact; the duration, frequency and reversibility of the impact.

The visual and ecological impact of development of this area will be localised, but will be permanent and irreversible.

EIA required? (i.e. is development likely to have significant environmental effects?)	No
--	-----------

Reasons: The proposal will have a landscape impact on the setting of the village and a very localised visual impact as viewed from a short section of Glen Road. It will result in the loss of an area listed in the Inventory of Ancient, Long Established and Semi-Natural Woodland of plantation origin which, although it has previously been felled, has the potential for regeneration. However, the proposal is just 1 hectare in extent and the landscape, visual and ecological impacts will be relatively localised. Although the site is part of a wider area of local ecological value, it is not a 'sensitive area' as defined by the EIA Regulations, For these reasons, it is considered that the proposal is not likely to have significant environmental effects.



Central Scotland Conservancy

Bothwell House, Hamilton Business Park, Caird Park
Hamilton ML3 0QA

Your ref:

Ms. Antonia Sobieraj
Committee Services Officer
Falkirk Council
Municipal Buildings
Falkirk FK1 5RS

Tel 01698 368530
Fax 01698 423464

Conservator
Keith D Wishart

22nd July 2014

Dear Antonia

**LOCAL PLANNING REVIEW COMMITTEE – P/13/0513/FUL, P13/0514/FUL,
P/13/0509/FUL – NOTICE OF REQUEST FOR WRITTEN SUBMISSIONS**

Thank you for your letter dated 1st July 2014 requesting further information. We are grateful for continued involvement in these applications and are able to offer any further advice as required by the Committee.

We note that the Committee has requested that the written submissions should be provided by an officer who has not had any prior involvement in the planning application process or the EIA enforcement process. We are happy to comply with this request however it should be noted that the opinions expressed in previous correspondence are not those of individual officers within Forestry Commission Scotland, but are the views of Forestry Commission Scotland.

1.0 Information in relation to the mitigation approaches proposed in the applicant's agent's letter dated 8th May 2014

1.1 We note that Mr Mitchell's letter of 8th May 2014 refers to an email from Mr Philip Harris – Falkirk Council dated 23rd April 2014 relating to possible environmental mitigation measures. We have not seen a copy of this email and so cannot refer to the contents.

This is the first time that we have been given an indication of proposed mitigation in relation to the planning process. We understand from this letter that the two options being proposed by Mr Mitchell are

- A) To plant trees/hedgerow plants on the housing sites as part of the proposed development totally approximately 0.12 hectares (12m x 100m approx)
- B) To fell a nearby area of existing woodland and replant with different species totalling 1.0 hectares

A third proposal is to implement a combination of the A + B.

1.2 The three planning applications proposed above would result in the complete and irrevocable loss of a significant area of semi-natural native broadleaved woodland which is of Long Established Plantation Origin.

Much of the application area was systematically deforested during 2013, with almost all tree cover from a 0.96hectare portion of the site being felled or cleared resulting in damage to both soils and local hydrology. Although there has been significant damage to this habitat, it still maintains characteristics of semi-natural woodland and is likely to regenerate to a highly native and semi-natural state over time if permitted. This portion of the site is subject to an Enforcement Notice under the Environmental Impact Assessment (Forestry) (Scotland) Regulations 1999 to ensure the re-instatement and regeneration of this woodland.

According to the guidance on the Scottish Government's Policy on Control of Woodland Removal (SGPCWR), there is a particularly strong presumption against removal of this type of woodland. (Guidance to Forestry Commission Scotland staff on implementing the Scottish Government's Policy on Control of Woodland Removal page 11 (Annex 2, paragraph 5)). This woodland represents an inextricable relationship between species and soils developed over a long period of time which is why this woodland type has been afforded the strongest possible protection by Scottish Government policy.

Therefore it remains our view that neither compensation nor mitigation for the removal of woodland is appropriate in these circumstances. We do not accept mitigation as suggested in the applicant's letter dated 8th May 2014. The woodland that would be lost is irreplaceable and considered to be of the type that the Scottish Government believes should be afforded the highest possible protection.

1.3 We would also offer the following background information with regard to the implementation of the EIA (Forestry) Regulations in this particular case and others where woodland removal is proposed as part of development.

The project comprising the removal of the woodland on the application sites was screened under the EIA (Forestry) Regulations 1999. Our decision was that there were likely to be significant effects on the environment arising from the deforestation. Therefore consent for these works would have been required.

Under normal circumstances, when consent is required, an application for consent is prepared and submitted. This application will include an Environmental Statement (ES). Our Guidance on implementing the SGPCWR provides details of what should be contained within an ES relating to woodland removal. The information contained within the Environmental Statement would include proposed mitigation which would enable comparison with the potential loss of public benefits resulting from woodland removal. This is the appropriate time for any mitigation for woodland removal to be considered. This is in accordance with the Scottish Government's Policy on Control of Woodland Removal.

2.0 Timescales relating to the enforcement notice which has been issued in respect of the deforestation on site.

On the 14th of February 2014, all three land-owners were issued with Enforcement Notices under the EIA (Forestry) (Scotland) Regulations 1999 to reinstate a portion of the application area which was deforested during 2013. This notice was effective from the date of issue.

These Enforcement Notices require the replanting of the woodland to be carried out by 30th June 2015 and for the trees to be protected and maintained for a period of ten years from planting (2024-2025).

All three land owners have appealed to the Scottish Government's Directorate for Planning and Environmental against the enforcement notices which were issued under the EIA Regulations. Following an appeal hearing on the 9th of July 2014, **we understand from DPEA that the decision date for the appeal is the 11th of September 2014.**

I hope this addresses the points that have been raised. In the meantime, we would of course be willing to provide any further advice or clarification as deemed necessary in the consideration of these planning applications.

Yours sincerely



Keith Wishart
Conservator

Guidance to Forestry Commission Scotland staff on implementing the Scottish Government's Policy on Control of Woodland Removal

November 2013

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Introduction

The Scottish Government's policy on control of woodland removal ('the Policy')¹ provides policy direction for decisions on woodland removal in Scotland. It is relevant to all woodland removal for the purposes of conversion to another type of land use.

Although Forestry Commission Scotland (FCS) does not regulate tree felling associated with developments that have planning permission, **Scottish Planning Policy** [para 148, page 30] states that 'Where woodland is removed in association with development, developers will generally be expected to provide compensatory planting. The criteria for determining the acceptability of woodland removal and further information on the implementation of the policy is explained in the Policy, and this should be taken into account when preparing development plans and determining planning applications.' The second **National Planning Framework** [94, page 46] also reinforces the policy on control of woodland removal.

The aim of this guidance is to help FCS staff facilitate implementation of the Policy, in relation to both the regulation of felling by FCS through felling licences and Environmental Impact Assessment (EIA); and the provision of advice to other authorities, including local planning authorities and the SG Energy Consents Unit.

The guidance was first produced in March 2010 and has now been updated in light of subsequent experience.

FCS works as part of Scottish Government (SG) to protect and expand Scotland's forests and woodlands and so has an interest in major developments that have the potential to impact on local forests and woodlands and/or the forestry sector. It is recognised that pre-application discussions between prospective applicants, key agencies and planning authorities are vital to ensure all parties have a shared understanding of the nature of the proposed development, information requirements and the likely timescale for determination².

For all proposed wind farm developments over 50MW, the SG's Energy Consents and Deployment Unit will consult FCS at the Scoping Report stage. Their scoping advice to developers helps to inform the content of the Environmental Statement. To secure a consistent approach across Scotland, FCS has developed a scoping opinion standard response.

[Note: This section may need to be updated when the new NPF3 and SSP2 are published.]

¹ See <http://www.forestry.gov.uk/website/forestry.nsf/byunique/inf-d-7unjy3#woodrem>

² See <http://www.scotland.gov.uk/Topics/Built-Environment/planning/modernising/cc/KeyAgencies/nationaldevelopments>

Guiding principles

The Policy has five guiding principles:

1. There is a strong presumption in favour of protecting Scotland's woodland resources.

Thus, the first consideration for all woodland removal decisions should be whether the underlying purpose of the proposals can reasonably be met without resorting to woodland removal – for example by changes to forest design, woodland type or management intensity .

2. Woodland removal should be allowed only where it would achieve significant and clearly defined additional public benefits. In appropriate cases a proposal for compensatory planting may form part of this balance.

Determining and weighting the significance of public benefits is implicit in the development management process. Environmental Statements (ES) should justify and provide evidence for the need for woodland removal. There is further guidance on this in Annex 1.

3. Approval for woodland removal should be conditional on the undertaking of actions to ensure full delivery of the defined additional public benefits.

When assessing the potential public benefits of existing woodland, consideration should be given to its potential future development, as well as its current attributes. For example, in even-aged/single-species, first rotation plantations this will normally require a forward look to their post-restructuring potential. Alternative futures for the woodland should also be considered (e.g. conversion to low management intensity native woodland) as these may enable proposals to proceed satisfactorily without the need for woodland removal.

The assessment of the potential public benefits associated with compensatory planting should recognise that it may take many years to match those associated with the woodland being removed. For example, the creation of woodland micro-climates, or the provision of woodland-related ecosystem services such as water quality improvements, may take decades to establish fully.

4. Planning conditions and agreements are used to mitigate the environmental impacts arising from development and Forestry Commission Scotland will also encourage their application to development-related woodland removal.

The applicant should provide enough detailed information for a comparison to be made between the environmental value of any woodland they propose to remove and their mitigation proposals. Further guidance on this is provided at Annex 1.

5. Where felling is permitted but woodland removal is not supported, conditions conducive to woodland regeneration should be maintained through adherence to good forestry practice as defined in the UK Forestry Standard.

Tree/shrub species must be suited to the site and the objectives of management. The likely future climate is also an important consideration.

A long-term plan should be provided, setting out the objectives, the actions required to achieve these objectives within a specified time-period, the monitoring process (with key milestones) and contingency plans for remedial work.

Criteria for determining the acceptability of woodland removal

The Policy identifies situations where:

- there is a strong presumption **against** removal of woodland;
- woodland removal is acceptable without compensatory planting (CP);
- woodland removal is acceptable with CP.

Woodlands with a strong presumption against removal

Page 7 of the Policy lists the types of woodland where their intrinsic environmental value indicates a strong presumption against removal. Proposals to remove these types of woodland should be judged on their individual merits. **However, only in exceptional circumstances should the strong presumption against woodland removal be overridden.**

All such cases will require a high level of supporting evidence and compensatory planting should be regarded as mandatory. Further guidance is provided in Annex 2.

Woodland removal without a requirement for compensatory planting

Page 6 of the Policy lists those circumstances where the removal of woodland would be appropriate without a requirement for CP.

In some cases the aims of those wishing to remove woodland can be achieved by converting the type of woodland to another type (such as from conifer plantation to wet woodland), rather than removing the woodland completely. To further the policy's strong presumption in favour of protecting Scotland's woodland resources, this option should be considered as part of the decision-making process. Further guidance is provided in Annex 3.

Woodland removal with a need for compensatory planting

Page 7 of the Policy lists potential justifications for woodland removal, provided there is CP.

However, the aims of those wishing to remove woodland may be achieved by considering design approaches which reduce the scale of felling required and/or converting the type of woodland to another type (such as from tall conifer plantation to low-height native/scrub woodland), rather than removing the woodland completely. **To further the policy's strong presumption in favour of protecting Scotland's woodland resources, options that avoid the need for CP should always be considered as part of the decision-making process.**

Annex 4 provides further guidance on circumstances where woodland removal with CP may be justified, and potential measures aimed at minimising woodland removal.

Where decisions on woodland removal and any CP are for the local planning authority or Scottish Ministers (in the case of applications considered by the SG Energy Consents Unit), FCS should be proactive in offering help and advice on the delivery of CP requirements. FCS will also help planners and developers to forge appropriate relationships with potential 'CP providers'.

The purpose of any CP that is required should be to secure, through new woodland on appropriate sites elsewhere, at least the equivalent woodland-related net public benefit embodied in the woodland to be removed.

The first edition of this Guidance stated that 'a reduction in area may be acceptable if it can be justified in terms of public benefit'; in practice, however, negotiations about this have proved difficult. **In future therefore FCS will normally expect the area of CP to equal the net area removed. Annex 5 sets out a framework for calculating the net area of CP.**

Other considerations relating to CP are as follows:

Location of CP	- To achieve the highest net public benefit, CP can, subject to the relevant conditions/agreements/approvals, be undertaken on appropriate sites anywhere in Scotland. However, local planning authorities may require CP within their own area. - Local Forestry and Woodland Strategies and related guidance should be used to help identify suitable areas for tree planting.
Standards and methods	- CP must be carried out in accordance with good forestry practice as defined in the UK Forestry Standard. - Although direct planting will normally be preferable, proposals for the use of natural regeneration should be considered where this is silviculturally feasible and capable of enforcement.
Timing of CP	CP should be completed before, or as soon as possible after, woodland removal. The relevant time-scale should be specified as part of the approval but would not normally be more than five years after the woodland is removed or two years after the development is completed. Subsequent establishment should be completed within the period for which enforcement action can be taken.
Grant aid for CP	Where CP is required as a condition of development it is not eligible for SRDP support.

Delivery

Working with planners/SG Energy and Development Consents Unit

It will be important for Conservators to develop good working relationships with local authority planners and (where necessary for larger schemes) with the SG Energy and Development Consents Unit, so that there is timely discussion of proposals. Ideally, any concerns about woodland removal and compensatory planting should be addressed prior to submission of planning applications.

However, where Conservators have unresolved concerns about applications they should write formally to the relevant authority explaining that the proposals "do not comply with the Scottish Government's policy on the control of woodland removal" and that further discussion is needed to address this."

Securing CP

Once the area and type of CP has been agreed, FCS will seek to help developers fulfil their obligations by providing advice.

The details of the proposed mitigation scheme must be referenced in the conditions of the planning consent. More information is available in Annex 6.

Simply making payments in lieu of planting would not in itself fulfil CP obligations. Some mechanism must be employed to ensure that the trees are planted, such as an agreement with a third party woodland creation provider.

The following routes to achieving CP may be relevant:

- Developer buys land and plants it.
- Developer leases land and plants it.
- Developer works with forestry agent, woodland company, local environmental project or other bona fide body to identify opportunities on private land which the developer can fund (instead of the private owner receiving grant monies).
- Local Authority offers land on which they would like new woodland creation (developer pays, as above).
- Developer enters into an agreement with another developer to provide wooded green space in new housing developments. This would need to be over and above any requirement for green space that is already included in the housing development's planning conditions.
- Forest Enterprise Scotland (FES) plants on the National Forest Estate (NFE) and uses the developer's payment for this to fund new acquisitions. However, while it may be possible to accommodate small areas of CP on the NFE in this way, it will be for the developers themselves to ensure that CP obligations are fulfilled. FES will adopt an exemplar in following this guidance on the NFE.

Enforcement

It will be for FCS to enforce CP conditions relating to felling licences.

Where CP is required in relation to development with planning permission, FCS has no statutory role but should be proactive in offering expertise on the implementation of the Policy. The development management process is a complex area.

Annex 6 outlines the potential role of planning conditions and planning agreements, and gives examples of planning conditions relating to CP.

Monitoring of woodland removal and CP

Monitoring of woodland removal will be a long-term process as it can take many years for subsequent land use change to become evident. It is also recognised that woodland removal to meet the requirements of the UK Forestry Standard, or temporary removal of tree cover associated with rotational felling/replanting, will not always be readily distinguishable from the types of woodland removal to which the Policy applies.

The principal, long-term monitoring of woodland removal will therefore be accommodated through the periodic National Forest Inventory of Great Britain (0.5 ha resolution).

As FCS, local planning authorities and the SG Energy Consents Unit all have responsibility for approving woodland removal in different circumstances, the collation of information on approvals is difficult. However a provisional assessment of woodland loss over the period 2001-11 is as follows:

Total area (ha) 2001-11	Unconditional felling approved for habitat restoration	Woodland area lost within windfarm and other renewable energy infrastructure projects	Unconditional felling approved for other reasons (e.g. housing, forest roads)
Private Sector	2190	7433	824
National Forest Estate	5164	1243	2384
Total	7354	8676	3208

Thus, the average woodland loss over this period, which largely pre-dated the Control of Woodland Removal Policy, is estimated at 1,920ha per year.

CP, which will not count towards the Government's annual targets for woodland creation, will be recorded separately in a standard centralised spreadsheet, monitored and managed by FCS National Office.

**FC Scotland
September 2013**

Environmental Statement

This annex gives guidance on what FCS would expect within an ES to help reach an informed decision on whether the woodland removal associated with development is justified. The details of the proposed mitigation contained in the ES will enable comparison with the potential loss of public benefits resulting from woodland removal.

Conservancy staff should seek to review the ES at the earliest opportunity to allow enough time to consider and evaluate the information contained within and enable appropriate advice to the planning authority and the developers.

General

- The first consideration for all woodland removal decisions should be **whether the underlying purpose of the proposals can reasonably be met without resorting to woodland removal**. Removal of woodland needs to be justified in the ES.
- **The approving authority should only approve woodland removal on the condition that a clear, concise and time-limited transition plan is in place**. This should include the means by which the transition of the land to its desired future state will be delivered and how the process will be monitored to ensure the objectives of the proposed land use change are achieved.
- The level of detail in the transition plan and monitoring procedures should be proportionate to the significance of the proposals.
- It should be made clear that both felling operations and CP (if relevant) must be carried out in accordance to good forestry practice as defined in the UK Forestry Standard.
- For complex or difficult aftercare conditions, expert review may be necessary to help ensure the project's objectives are achieved satisfactorily. The frequency of such reviews should be documented in the transition plan and will vary depending on the degree of difficulty/complexity of the aftercare and the time-scale over which it will take place.

Design approaches which reduce the scale of felling required

- The ES should consider design approaches which reduce the scale of felling required to facilitate the development e.g. wind turbines with higher hub and tip heights, short rotation forestry, keyhole techniques, the developer accepting a lesser wind yield or turbine warranty in the interests of balancing competing constraints.
- Where a developer proposes to install turbines into a forest (including keyholing), a full description of the topography of the site (and how this influences tree heights at individual wind turbine locations), is necessary. This assessment avoids woodland that would have no impact on windflow being unnecessarily felled.
- Knowledge regarding the impact that trees can have on wind turbines is improving as more data becomes available. It is becoming understood that maintaining trees of an even height, close to wind turbine bases is possible, and can reduce wind shear, turbulence and improve wind yield compared with keyholing.

The impacts of the development proposal

- The ES should recognise the social, economic and environmental values of the forest and take into account the fact that, once mature, the forest would have been managed into a subsequent rotation, often through a restructuring proposal that would have increased the diversity of tree species and the landscape design of the forest.

- The ES should discuss, describe, assess and where appropriate illustrate the landscape impacts of the felling plans. Often the landscape impacts of large scale clear fell areas are significant and the scale, speed and design of felling may be at odds with forestry best practice.
- The ES should describe the woodland habitat found in terms of its social, economic and environmental value. It is common to find that the developer hasn't provided a methodology which clearly demonstrates how they assessed the value of the woodland and the significance of impact that results from felling it. **This is essential information, as it in turn informs what mitigation is required.**
- The ES should describe the proposed mitigation (either compensatory planting and or other restorable habitats) in terms of its social, economic and environmental value, so that an assessment can be made as to whether the proposed mitigation is appropriate and compensates for the negative impacts of woodland removal.

Details of the proposed mitigation

There have been examples of developments which have been consented without the mitigation being properly finalised and agreed. This has led to the mitigation not being appropriate, deliverable and most importantly enforceable. **The details of mitigation should therefore not be left to post-consent Habitat Management Plans (or others) to decide and implement.**

It is imperative that the provision of a CP plan is included as part of the conditions of planning approval (see Annex 6 for more details). Such plan will be assessed and approved by Conservancy staff.

The specifics of the proposed mitigation are absolutely vital in understanding the development in full and need therefore to be appropriately described in the ES.

The ES should contain information about the exact area of CP (in hectares) that is to be carried out both on site and off site. The specifics related to felling and of the proposed mitigation should be properly described and assessed in the ES. Without this detail an application is not complete, and therefore it is not possible to be in a fully informed position, in order to arrive at a conclusion, about the application.

Compensatory Planting Plan

A suitable Compensatory Planting Plan has to be agreed before the developer can proceed with the development and the felling of trees. The CP plan must flesh out all the details of the proposed planting, including its maintenance over the entire life-span of the development.

The details of the proposed mitigation should be provided to FCS and the planning authority before any development takes place. This should be referenced in the conditions of the planning consent ('No development shall commence until [...]).

The details of the CP proposal, e.g. who, where, why, what, when and how the compensation will be delivered, must be properly described in the CP plan and approved by the Conservancy.

Who: The person who is to survey, describe, assess, specify and deliver both the felling proposals and compensatory planting proposals must possess the relevant qualifications, technical abilities and have the necessary experience – e.g. a chartered forester.

Where: The location of both the felling and compensatory planting proposals should be fully detailed, described and supported with good quality maps. If there peat depth is a relevant consideration, a full assessment should be undertaken using recognised survey techniques and details of this provided in the application.

If the developer does not own the land, ensure appropriate landowner agreements and access rights are in place that allow compensatory tree planting. **The CP proposals (if required) must be assessed through the normal forestry EIA process and the necessary consents should be in place.**

Why: A rationale that explains why both the felling and compensatory planting proposals are necessary and designed the way they are, should be provided. This should include the assessment of impact and proposed mitigation.

What: A full description and specification for both felling and compensatory planting should be provided. The harvesting system should be described. A full silvicultural proposal for compensatory planting, supported with maps should be provided. This should include: ground preparation, drainage, planting technique, stocking density, species, maintenance and a protection plan.

When: The timings for both felling and compensatory planting should be detailed. All CP should be completed within five years after the woodland is removed or within two years of the development being completed. Ensure that a maintenance plan with appropriate timescales is provided- this information should be included in the CP plan. Subsequent establishment should be completed within the period for which enforcement action can be taken.

How: Ensure that compensatory proposals are enforceable, e.g. Section 36 or legal agreement- see Annex 6 for more information.

Establishment of CP

FCS may advise the planning authority for an independent, qualified and technically competent professional(s) (e.g. chartered forester) with the required experience, to be identified within the planning consent. Such professional(s) should be tasked with inspecting the compensatory planting at regular intervals (year 1, 5 and 10) **to ensure that the trees are planted correctly, maintained to the required standard and ultimately established into woodland.** The woodland will have to be maintained thereafter. This professional individual should report to the planning authority, to allow the compensatory planting condition to be managed and ultimately discharged. The details of this should be included in the CP plan.

Woodlands with a strong presumption against removal

A particularly **strong presumption against woodland removal** should be applied to the following:

- Sites designated for their woodland features (habitats) or woodland-related species under EU or national designations.
- Other nationally designated sites (for example National Scenic Areas and National Parks) where woodland is a significant contributory feature of the designation.
- Woodland types listed in the EC Habitats Directive.
- UK BAP priority woodland types in areas mainly composed of ancient, semi-natural woodland (ASNW), ancient woodlands planted with native species, long-established woodlands of plantation origin (LEPO) with significant biodiversity interest, or well-established semi-natural priority woodland types. The Native Woodland Survey of Scotland gives data on ecological condition and this can help to define the nature conservation value of native and ancient woodlands.
- Woodlands covered by TPOs (in the case of individual woodland trees covered by TPOs, judgement will be required on the potential impact of removing woodland adjacent to those trees).

Slightly more flexibility can be applied to the following:

- Other areas of priority native woodland habitats, of lower biodiversity value, including semi-natural woods established within the last 25 years or so, and recently planted native woods.
- Non-native Plantations on Ancient Woodland Sites (PAWS) with very few remnant ancient woodland features.
- Other woodlands supporting EU or UK priority species reliant on woodland. These should be assessed in terms of the conservation significance of the possible losses and gains in terms of number of species and the proportions of populations and/or range affected from converting to open habitat. (N.B. for European Protected Species there are licensing requirements under the Habitats Regulations 1994).
- Areas mapped as forming parts of key forest habitat networks in a regional Forestry and Woodland Strategy.

Woodland removal without a requirement for compensatory planting

Objective	Further guidance
<i>Enhancing priority habitats and their connectivity</i>	• Priority habitats are those listed in the EC Habitats Directive Annex 1 and the UK Biodiversity Action Plan (UKBAP). These include priority woodland habitats: Lowland Mixed Deciduous Woodland, Upland Mixed Ashwood, Upland Oakwood, Upland Birchwood, Native Pine Woodland, Wet Woodland and Wood Pasture and Parkland. • Woodland presence within or adjacent to open ground priority habitats is not, in itself, a justification for woodland removal. It is the nature and degree of the woodland's impact on the priority habitat(s) or dependent priority species (and the benefit that would be gained by woodland removal) that will inform the need or otherwise for removal. • For <u>designated</u> open ground habitats, SNH's Site Condition Monitoring reports can be used to assess woodland impacts but direct advice from SNH should also be sought. • For undesignated areas of UK priority open ground habitats, consideration should include the effects of woodland removal on the quality, size and coherence (such as de-fragmentation and habitat mosaic benefits) of the open habitat area, particularly in relation to the specific requirements of, and evidence of impact on, priority species. • Consideration can be given to woodland removal proposals adjacent to the boundary of open ground priority habitats if there is strong evidence that the woodland is having a significant impact on their conservation status or where the public benefits of extending that habitat significantly outweigh the public benefits of retaining the woodland. • The current woodland site should be capable of restoration to the desired habitat types within a reasonable timescale – or where this is not practical (due to time being an essential factor in the restoration process), should at least be capable of being set on course for the desired habitat type to be evident within 15-20 years without further management intervention.
<i>Enhancing populations of priority species</i>	• Priority species are defined in endnote xi of the Policy and include those species listed in the EC Habitats Directive and the EC Birds Directive, and other priority species listed under the UK BAP. • The nature of woodland impacts (positive and negative) on priority species will depend on which species are present. The principle is that proposals would need to demonstrate a significant net benefit for those species. • The net benefits to priority species should be assessed in terms of the significance of woodland removal to their conservation status. • Where woodland priority species are present, consideration of the impact of woodland removal on their wider conservation status will be necessary. The strong presumption against woodland removal where such species are present (see page 7 of the Policy) should

	apply where losses would be of conservation significance to one or more of those priority species. This should be considered in terms of the potential loss of population and /or range and number of species. Exceptionally, woodland removal may be justified if the gains from that removal will provide a clear and significantly greater net benefit to open ground priority species compared to the woodland priority species that would be lost.
Enhancing nationally important landscapes, historic environment and geological SSSIs	The main consideration is whether woodland (in its current or future condition) is, or is likely to become, significantly detrimental to such designated sites. This should include appearance/condition, context, understanding and interpretation.
Improving conservation of water resources	Water quality - The main consideration is whether, based on good evidence, removal of woodland (rather than a change of woodland type/management intensity) would be the most effective way of addressing significant water management issues identified in River Basin Management Plans. In most cases, adherence to the UKFS Forests & Water Guidelines, and adherence to pollution regulations would be all that is needed to safeguard water quality. Water quantity - The main consideration is whether a catchment has a high water demand (high regional population or significant demand for regionally important irrigation) in an area of inherently low rainfall (generally only in the east of Scotland) <u>and</u> where there is strong evidence to suggest that woodland will have a significant impact on water yield. - Woodland removal to address the above must not have a significant impact on water quality or to current/predicted downstream flooding risk to people or key infrastructure.
Improving conservation of soil resources	Woodland removal will only rarely be justified for the purposes of soil conservation as changes to woodland type or management intensity, coupled with adherence to the UKFS Forests & Soils Guidelines, will usually be expected to suffice. - Currently, the main consideration is whether woodland can be shown to be having, or is likely to have, a significant detrimental impact on greenhouse gas emissions, or slope stability. - Scottish Government policy is to deliver renewable energy without environmental harm and to deliver biodiversity objectives, including the conservation of designated wildlife sites and important habitats such as peatlands. This Technical Note http://www.scotland.gov.uk/Resource/Doc/917/0121469.pdf provides a methodology to explore potential carbon emission savings and losses associated with a wind farm development in forestry or on peatland. Case-specific advice can be sought from Forest Research. - Woodland removal to aid slope stability will require evidence to show that woodland-induced instability is causing, or is predicted to cause, significant negative impacts on transport networks, communities or

	water quality, and that changes to the woodland type or management intensity, particularly in conjunction with a reduction in grazing pressure, would be unlikely to suffice.
Public safety	Justifications could include: • A significant, proven risk to road users. The speed and volume of traffic are relevant considerations. • An agreed need to reduce significant fire hazard to people, homes and business premises. • An identified need for emergency service access. • The safe functioning of existing infrastructure such as electricity supplies and oil/gas/water pipelines. Note that this justification would not apply to planned programmes of wayleave widening to enhance the longer-term resilience of the network.

Woodland removal with a need for compensatory planting

Objective	Further guidance
<i>Helping Scotland mitigate and adapt to climate change</i>	<i>Renewable energy</i> • To maximise climate change mitigation and adaptation benefits, integration of the Government's renewable energy and forestry policies should be sought. • Alternative options, such as the use of low-height woodland, (e.g. some types of native woodland and shrubs, short rotation coppice or short rotation forestry), or increased hub-height (subject, of course, to other technical and environmental considerations) might enable proposals to proceed without the need for woodland removal. • Scottish Government policy is to deliver renewable energy without environmental harm and to deliver biodiversity objectives, including the conservation of designated wildlife sites and important habitats such as peatlands. This Technical Note http://www.scotland.gov.uk/Resource/Doc/917/0121469.pdf provides a methodology to explore potential carbon emission savings and losses associated with a wind farm development in forestry or on peatland. Case-specific advice can be sought from Forest Research. <i>Sustainable flood management</i> • The intention is to support the Flood Risk Management (Scotland) Act 2009. • Appropriate types of woodland/ woodland management will normally benefit sustainable flood management. It is unlikely that woodland removal would be essential for 'soft engineering' associated with sustainable flood management but it might be justified for 'hard engineering' solutions to existing and predicted flooding issues likely to affect communities or essential infrastructure. <i>Priority habitat connectivity</i> • Proposals that assist the adaptation and resilience of species or ecosystems to climate change, but which do not fully satisfy the criteria for woodland removal without compensatory planting, should be considered if woodland removal would make a significant net contribution to Scotland's biodiversity objectives. This could include measures that would significantly increase the resilience of priority open ground ecosystems (e.g. by increasing their size and/or quality) or significantly enhance the movement of important species to new areas (e.g. where woodland removal would clearly aid the connectivity and/or quality of suitable habitats). This should be judged mainly in relation to designated sites and priority species but other well justified proposals can also be considered. • Options for converting the existing woodland into another type of woodland (or management intensity) should be reviewed so that the <u>comparative</u> advantage of conversion to priority open ground habitat can be assessed in terms of the net benefits to habitat connectivity. <i>Reduction in net greenhouse gas emissions</i>

	- Consideration can be given to proposals to remove woodlands of intrinsically low public benefit and replace them elsewhere with a woodland capable of significantly greater carbon sequestration potential (and with at least the equivalent other public benefits of the existing woodland). - The Woodland Carbon Code and associated guidance provides information on carbon sequestration and emissions associated with woodland creation projects. This includes estimates of the change to carbon stocks on the site over time as a result of tree establishment and growth. The net benefit of any project, can then be estimated by comparison with the baseline land use scenario. The guidance and an example calculation spreadsheet are available at: http://www.forestry.gov.uk/forestry/infd-8jue9t.
Enhancing sustainable economic growth or rural/community development	Economic development - The Government's central purpose is to increase sustainable economic growth. Proposals that would significantly support that aim are likely to be acceptable unless there is a strong presumption against removal. Examples could include the provision of new housing or infrastructure to meet identified local or regional needs. Temporary greening strategies - Where woodland has formed part of agreed temporary greening strategies subsequent woodland removal, consistent with those aims, would be acceptable. Temporary greening means the agreed creation of 'temporary woodland' to improve the local environment and hence attract inward investment (together with other public benefits) on the understanding that some or all of the woodland may need to be removed in later years to enable that investment (e.g. new housing or factory units) to proceed. Such measures can encourage potential developers to improve environmental conditions without that improvement subsequently jeopardising later planning applications (i.e. it avoids 'planning blight'). Community aims - Where a proposal meets the needs of a democratically formed community aim (e.g. supporting or providing significant local facilities) and is judged to be in the net public interest, woodland removal with compensatory planting is likely to be acceptable. Reduction in damage to weak but essential public roads - Woodland removal with compensatory planting can be considered where it would prevent significantly expensive, unavoidable and repeated damage to weak but essential public roads. Significant 'through routes', and the presence of schools, essential infrastructure and significant community facilities would point towards a road being essential.
Scotland as a tourist destination	- Proposals should be considered where the subsequent enhancement would be of significant direct or indirect benefit to an important existing, or proposed, tourism facility. - See also 'Economic development', above.
Encouraging recreational activities & public	Only rarely is woodland removal, over and above re-design necessary to meet the requirements of the UK Forestry Standard (which could involve, for example, the creation of 10-20% permanent open space to encourage

<i>enjoyment of the outdoor environment</i>	the development of wildlife habitats), expected to be the most effective way of delivering public benefit enhancements of this nature. • See also 'Community aims' above. • See also 'Economic development' above.
<i>Reducing natural threats to forests or other land</i>	• Only rarely is woodland removal expected to be the most effective way of reducing natural threats to forests and other land. Proposals would need to be particularly well justified.
<i>Increasing the social, economic or environmental quality of Scotland's woodland cover</i>	• Where the existing forest does not currently meet the UK Forestry Standard, has low potential to do so and the land can be restored to the desired future condition, woodland removal is likely to be acceptable, particularly if the compensatory planting will have significantly greater public benefits. • Where the current woodland meets the UK Forestry Standard but otherwise has low public benefits and the land can be restored to the desired future condition, a proposal for woodland removal should be considered if the compensatory planting would have significantly greater public benefits than the existing woodland.

Calculating the area of CP

The default position is that compensatory planting should be of an equivalent woodland area, on appropriate site types and with at least the equivalent woodland-related net public benefits, as the woodland that is removed.

However, the area required as CP may not always be equal to the gross area of woodland removed. **Compensation should equal the net area of woodland** that would - in the absence of the proposal for woodland removal and in accordance with the principles of sustainable forest management and the UK Forestry Standard - have been expected to remain on the site through an approved restructuring long-term plan.

The following table provides a framework for calculating the net area:

Decision stage	Area
How much woodland is to be removed?	Gross area to be removed (GA)
According to your approved long-term forest plan, is there any land that, in the absence of the woodland removal proposal, would not have been restored back to woodland for the reasons outlined in the Policy (page 6)	Area to be restored to <u>high value</u> open-ground habitats (OH)
Consider any infrastructure associated with the existing forest (not the proposed development), eg forest roads	Infrastructures (I)
Is there any designed open ground in the current forest (which will be required in the CP)?	Area of designed open ground (DOG)
What is the net area of woodland removal?	Net area = GA - OH - I - DOG
	CP area = Net area

A simple case study has been developed to show how to calculate the net woodland area removed.

Planning conditions and planning agreements

The details of the proposed mitigation scheme must be referenced in the conditions of the planning consent. It is not appropriate to leave mitigation detail to post consent habitat management plans to decide and implement.

Planning conditions can be imposed through:

- the local authority (Planning Condition under the Town and Country Planning Act 1997) or
- through the Energy Consents Unit of the Scottish Government through a deemed planning issued by the Scottish Ministers (a Section 36 or 37 Consent under the Electricity Act 1989)

They are more likely to be appropriate where there is a straightforward situation e.g. where a known piece of land is available for CP and is controlled by the developer. In any more complex situation, conditions are unlikely to be suitable since enforcement action can only be taken on the owner of the land and not on the developer. Monetary payments should not be secured through conditions.

Conditions should be phrased positively (i.e. requiring the developer to do 'x') or suspensively (i.e. preventing the development until the developer has done 'y'). Positive conditions can only be applied on land for which the applicant has control. Suspensive conditions are not subject to the same restriction and where meeting the terms of a suspensive condition requires the co-operation or consent of a third party it becomes known as a 'Grampian condition' (after a Court case in 1984).

As a matter of policy, planning conditions should only be imposed where they are:

- Necessary (i.e. permission would be refused without it);
- Relevant to planning (i.e. not controlled by another consent regime);
- Relevant to the development to be permitted (i.e. a direct consequence of the development in question);
- Enforceable (i.e. compliance can be monitored);
- Precise (i.e. what, by whom, by when?); and
- Reasonable in all other respects (e.g. deliverable, land in developers control, doesn't require another consent).

When it is not possible to identify the location of the CP and the delivery mechanism, the planning conditions can reference a suitable Compensatory Planting Plan. **The key aspect is that the CP Plan has to be agreed before the developer can proceed with the development and the felling of trees.** The CP plan must flesh out all the details of the proposed planting, including its maintenance over the entire life-span of the development.

Details of these tests, each of which must be met, are set out in Circular4/1998 [ref].

An example of a planning condition from The Highland Council:

"Before the first turbine is commissioned, a scheme for compensatory planting, in accordance with the Scottish Government's policy on the Control of Woodland Removal, is to be submitted to and agreed in writing by the Planning Authority. The scheme shall, wherever possible, include planting that will provide an element of screening from the public road network. The agreed scheme shall be implemented in full within 3 years of the commissioning of the first turbine."

Section 36 or 37 Consent:

Section 36 or 37 consents relate to applications for electricity generating stations in excess of 50 megawatts and overhead power lines, which are made to the Scottish Ministers. They are dealt with by the SG Energy Consents Unit.

As 'deemed planning' cannot be varied except by the Minister and so great care is required to design a condition which is sufficiently flexible to cope with the realities of implementation. If, for example a S36 or S37 consent requires 100 ha compensatory planting, it would not be possible (without Ministerial agreement) subsequently to agree that only 80 ha would be sufficient given the nature of the planting to be undertaken.

For an example of the wording expressed in a Section 36 planning condition, contact maida.ballarini@forestry.gsi.gov.uk

Planning agreements:

Where compensatory planting cannot be secured by a condition, two forms of planning agreement are available:

- Section 75 agreements under the Town and Country Planning {Scotland} Act 1997
- Section 69 agreements under the Local Government {Scotland} Act 1973

Though Scottish Ministers are seeking to limit the use of Section 75 agreements, the use of one or other of these agreements is likely to be required for the remainder of circumstances in which compensatory planting is required. Unlike conditions, planning agreements can include monetary payments to the planning authority. It will be for local authorities to determine which form of agreement is best suited to their needs.

In a similar way to Conditions, planning agreements must be:

- Necessary (i.e. permission would be refused without it, requires ongoing commitment);
- Serve a planning purpose (i.e. based on the development plan and any supplementary guidance);
- Relevant to the development (i.e. required as a direct consequence of the development);
- Fair and reasonable in scale and kind (i.e. related to the scale of woodland loss; and
- Reasonable (note that planning agreements can relate to land other than that covered by the permission).

Make sure that the woodland area proposed to be removed and compensated that has been identified and quantified in the ES, mirrors what stated in the planning conditions or in the planning agreement.



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22nd August 2014

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Falkirk
FK2 7YZ

For the attention of Antonia Sobieraj

Dear Antonia,

Local Planning Review Committee

Location: Infill land located to the south-east of Byways, Glen Road, Torwood.

Plot no.1 – Peter Hoggan (Owner) - P/13/0509/FUL

Plot no.2 – Roy Mitchell (Owner) - P/13/0513/FUL

Plot no.3 – Allan Gilmour (Owner) - P/13/0514/FUL

Thank you for your letter dated 8th August 2014, enclosing a copy of further written submissions requested by the Planning Review Committee at their meeting on the 9th June 2014.

My comments in response to these submissions are as follows:-

1. It is interesting to note that the Director of Development Services does not consider that an Environmental Impact Assessment was necessary, as the proposal would have a very localised impact as viewed from a short section of Glen Road. It is not a "sensitive area" as defined by the EIA Regulations and would not likely to have a significant environmental effect.

2. The Hearing against the issue of an Enforcement Notice served by the Forestry Commission was held on the 9th July 2014 and we await the issue of the formal Decision Notice, around the 11th September 2014 from the Scottish Ministers.

Again, it is interesting to note that the Director of Development Services does not consider that an Environmental Impact Assessment was necessary and this supports our Appeal justification with the Scottish Ministers. This statement is contrary to the opinion of the Forestry Commission, and it was on this basis that we raised an Appeal against the serving of the Enforcement Notice, as an EIA was not "RELEVANT" due to the size of the combined applications being under the acceptable threshold area; not located within any of the defined "SENSITIVE AREAS" and would not have a "SIGNIFICANT" impact on surrounding environment.

3. It was not surprising to note the position taken by the Forestry Commission that neither compensation, nor mitigation for the removal of woodland would be considered acceptable by them, as any agreement to this would undermine their position taken over the issue of the Enforcement Notice.

At the Hearing on the issue of the Enforcement Notice, the Reporter asked the same question of the Forestry Commission and they were unwilling to consider any compromise. After the Hearing questions were over, the Reporter requested that a site visit was necessary to view the areas suggested by the applicants, as suitable areas for proposed mitigation, which were identical to the proposals put forward to Falkirk Council.

4. The timescales for replanting set out in the Enforcement Notice require reinstatement of a portion of the area by 30th June 2015.

This is subject to the outcome of the Decision to be taken by the Scottish Ministers on our Appeal against the serving of the Enforcement Notice.

5. The response from the council's Biodiversity Officer still accepts that mitigation in some form would be acceptable to the council. The woodland soils and seedbank referred to within the application sites were removed from the site back in 2002, when the initial tree felling occurred, to assist with the formation of a haul area associated with the removal of the commercial forest plantation (This information was stated by the Torwood Woodland Group in their letters of objection).

The woodland soils and seedbank would still exist in the woodland to the rear, which formed part of the designated long established woodland of plantation origin referred to as "Whinnie Muir" and the proposal to replace conifer woodland with the native broadleaved woodland over an area twice the size of the 3 proposed development sites (suggestion (b)), as per the specification imposed by the Forestry Commission would achieve the same habitat and environmental improvement, as within the application sites, but over a greater area that would also enhance the setting of the Listed Torwood Castle adjacent.

I trust these further comments are of assistance to the Members of the Planning Review Committee in their determination.

Yours sincerely



Roy Mitchell