



MINUTES OF THE MEETING OF THE CABINET

TUESDAY 10 SEPTEMBER 2013
COUNCIL CHAMBER, TOWN HOUSE, HADDINGTON

1

Committee Members Present:

Councillor S Akhtar
Councillor D Grant
Councillor N Hampshire
Councillor W Innes (Convener)
Councillor J McMillan
Councillor M Veitch

Other Councillors Present:

Provost L Broun-Lindsay
Councillor S Brown
Councillor S Currie
Councillor J Gillies
Councillor J Goodfellow
Councillor P MacKenzie
Councillor P McLennan
Councillor K McLeod
Councillor J Williamson

Council Officials Present:

Mrs A Leitch, Chief Executive
Ms M Patterson, Depute Chief Executive (Partnership and Services for Communities)
Mr A McCrorie, Depute Chief Executive (Resources and People Services)
Mr J Lamond, Head of Council Resources
Mr M Leys, Head of Adult Wellbeing
Mr R Montgomery, Head of Infrastructure
Mr D Small, Director of East Lothian Health & Social Care Partnership
Mrs K MacNeill, Corporate Legal Adviser
Mr J Cunningham, Benefits Manager
Mr K Christie, Revenues Manager
Ms C McCorry, Community Housing Services Manager
Mr D Russell, Communications Manager
Ms J Ogden-Smith, Communications Officer

Clerk:

Ms A Smith

Apologies:

Councillor T Day

Declarations of Interest:

None

Visitors:

None

1. SUMMARY OF CONTRACTS AWARDED BY EAST LOTHIAN COUNCIL, 30 MAY-28 AUGUST 2013

A report was submitted by the Depute Chief Executive (Resources and People Services) advising Members of all contracts awarded by the Council from 30 May to 28 August 2013, with a value of over £150,000.

Decision

The Cabinet agreed to note the award of contracts with a value of over £150,000 from 30 May to 28 August 2013 as listed in Appendix 1 to the report.

2. FINANCIAL REVIEW, 2013/14, QUARTER 1

A report was submitted by the Depute Chief Executive (Resources and People Services) informing Cabinet of the financial position of the Council at the end of the first quarter of the financial year 2013/14.

The Head of Council Resources, Jim Lamond, presented the report, informing Members that the report included some background summary information in respect of both the 2013/14 budget setting decisions taken by the Council in February 2013 together with information reported to Council recently in respect of the closing position for 2012/13. Mr Lamond drew attention to the salient points of the report, in particular the performance relating to the General Services Revenue, Housing Revenue Account and General Services Capital. He advised that no budget adjustments had been made during the first 3 months of the year.

In response to question from Councillor Currie about the overspend in relation to community partnerships and the impact on the rest of the budget, Mr Lamond referred to additional grant awards made in 2012-13 as well as planned efficiency savings and advised that there would be no direct consequence to this financial year resulting from the grant awards. In response to a question about Mortgage to Rent applications and other registered social landlords the Depute Chief Executive, Monica Patterson, indicated she would investigate and respond directly to Councillor Currie.

Councillor McLennan referred to the previous and current budget position in relation to Adult and Children's Wellbeing services, requesting comment.

Councillor Innes stated that the report set out the factual financial position. There were challenges but as detailed in the report the budgets would be managed and necessary steps taken. He stressed that this Administration would adhere to the budget.

Councillor Currie referred to the General Services Revenue remarking that in previous years there had been a surplus at the end of quarter 1, an overspend at the end of this quarter for the first time in recent years was a cause for concern. He made particular reference to Adult and Children's Wellbeing services. In relation to Mortgage to Rent applications he reiterated his query about whether the other registered social landlords were able to deal with these applications. He referred to the supported bus contract overspend and asked what action was being taken. He stressed the need overall to protect front line services.

Councillor Hampshire responded that the Council was working hard to maintain services, despite the lack of resources and reduced number of staff.

Councillor Veitch referred to the budget summary, detailed at paragraph 3.2 of the report, stating that against this backdrop much of the report content was to be welcomed. He drew attention to Appendix 1, highlighting that a number of efficiency savings were likely to be achieved; the Council was back on track in relation to the Financial Strategy. He paid tribute to the Leader and Chief Executive. In relation to supported bus services he stated that this Administration was committed to maintaining these services; discussions were ongoing with operators regarding improvements to the services provided.

Councillor Akhtar made reference to the demographic challenges and demand on services facing East Lothian, highlighting that the county was one of only two areas in Scotland where the population would increase in relation to both young and old age groups.

Councillor Innes stated that this Administration had set accurate budgets to deal with the challenges facing the Council. This Administration was responsible and would protect front line services where possible. He thanked Mr Lamond and his team for the report.

Decision

The Cabinet agreed:

- i. to note the financial performance of services at the end of June 2013 and also the actions being taken by management to ensure that services were delivered within approved budgets; and
- ii. to approve the change in the charging approach for Janitorial Services outlined at Section 3.18 until full agreement was reached on the future shape of the service.

3. WELFARE REFORM UPDATE

A report was submitted by the Depute Chief Executive (Resources and People Services) providing Cabinet with an update on the changes introduced as a consequence of the Welfare Reform Act (2012). The report also outlined the impact for East Lothian households sustaining affordable tenancies or contending with other hardship and the impact for a number of Council services and the measures the Council had taken to try to minimise potentially negative impacts of welfare reform in the community.

The Benefits Manager, John Cunningham, presented the report, informing Members this was the first report since April 2013, the annual date of implementation of the new Welfare Reform Act (2012). He reported that over the last year the Welfare Reform Task Group had considered the service implications of the various welfare reforms and had produced an action plan, attached as Appendix 1. He advised that a Welfare Reform Reference Group had recently been established with key partners. He drew attention to the key points in relation to Council Tax Reduction Scheme, Scottish Welfare Fund, Housing Benefit Under Occupancy, Benefit Cap, Discretionary Housing Payments and Universal Credit.

A video, part of a range of videos produced by the Council entitled “East Lothian Debt, Benefits and Housing Advice”, was shown.

Councillor Currie made disparaging reference to Universal Credit and the planned national roll-out. In relation to the ‘Bedroom Tax’ and the 840 Council tenants affected, he stated that the position of the SNP Group was that no evictions should be guaranteed. He expressed

concern that the figures would get worse as the impact of these welfare reform changes took effect. He stated this was a direct attack on the most vulnerable people in society.

Councillor Innes gave thanks to Mr Cunningham and his team, the report detailed concrete proposals to try to address welfare reform issues. The Council had provided a range of information to support and advise people of these changes. He was confident the Council would be able to support all its tenants and residents. This was new territory; the Council had to be able to address new challenges as they arose. It was good to see new approaches being implemented to try to engage with people not already reached. He asked the officers present to pass on thanks to their staff for their work on this issue.

Councillor Akhtar also commended officers for their approach; this was a good example of partnership working.

Councillor MacKenzie referred to the video on rent arrears which had highlighted the considerable effect of debt. He would like to see more of a holistic approach; for the Council to bridge the gap between the figures and health and wellbeing. He made reference to discussions at the recent Safe and Vibrant Communities Partnership and remarked on the lack of information on mental health and wellbeing. He advised that over the years the suicide rate in East Lothian had increased; in 2011 there had been the largest number for some years. He made a request - for the Council to consider not just the financial information but to be able to find some way to achieve a better mental health for the people of East Lothian.

Councillor Veitch thanked Mr Cunningham and team for their excellent work. He agreed with the comments expressed by Councillor MacKenzie. He welcomed the implementation of the Scottish Welfare Fund. He also welcomed the roll out of the Benefit Cap across the country. With regard to Discretionary Housing Payments he indicated that the UK Government had increased its contribution to local authorities.

Decision

The Cabinet agreed:

- i. to continue to promote awareness and understanding of the impact of the welfare reform changes on East Lothian communities;
- ii. to take action to try and minimise any potential negative impacts of welfare reform by ensuring that Council service areas were optimally configured to continue to deliver high quality services to East Lothian residents; and
- iii. to note the potential impact of welfare reform on individuals and families when taking decisions about service development and to consider as part of budget deliberations the potential impact of welfare reform on the Council's revenues and council house rental income.

4. PUBLIC MINUTES OF THE MEETINGS OF THE LICENSING SUB-COMMITTEE HELD ON 13 JUNE AND 15 AUGUST 2013

The public minutes of the meetings of the Licensing Sub-Committee held on 13 June and 15 August 2013 were approved.

SUMMARY OF PROCEEDINGS – EXEMPT INFORMATION

The Cabinet unanimously agreed to exclude the public from the following business containing exempt information by virtue of Paragraphs 1, 3 and 6 (information relating to

particular employees of the Authority; information relating to any particular applicant for, recipient or former recipient of a service provided by the Authority; information concerning the financial or business affairs of any particular person other than the Authority) of Schedule 7A of the Local Government (Scotland) Act 1973.

Sub-Committee Minutes

The private minute of the meeting of the Employee Appeals Sub-Committee held on 6 June 2013 was approved.

The private minute of the meeting of the Licensing Sub-Committee held on 13 June 2013 was approved.

The private minutes of the meetings of the Tenancy Sub-Committee held on 20 June, 25 July and 15 August 2013 were approved.

The private minute of the meeting of the Social Work Appeals Sub-Committee held on 26 June 2013 was approved.

DRAFT

REPORT TO: Cabinet

MEETING DATE: 12 November 2013

BY: Depute Chief Executive (Resources and People Services)

SUBJECT: Summary of Contracts Awarded by East Lothian Council,
29 August – 31 October 2013

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1 PURPOSE

- 1.1 To advise Members of all contracts awarded by the Council from 29 August – 31 October 2013 with a value of over £150,000.

2 RECOMMENDATIONS

- 2.1 To note the award of contracts with a value of over £150,000 from 29 August – 31 October 2013, as listed in Appendix 1 to this report.

3 BACKGROUND

- 3.1 Details of all contracts awarded by the Council are lodged in the Members' Library Service. Appendix 1 to this report contains details of all contracts with a value of £150,000 and above which have been awarded since the last meeting of the Cabinet.

- 3.2 Members are asked to note that reports relating to contracts can be accessed via the following link to the Members' Library Service on the Council's eGov system:

http://www.eastlothian.gov.uk/site/scripts/meetings_committees.php?headerID=102

4 POLICY IMPLICATIONS

- 4.1 None

5 EQUALITIES IMPACT ASSESSMENT

- 5.1 This report is not applicable to the wellbeing of equalities groups and an Equalities Impact Assessment is not required.

6 RESOURCE IMPLICATIONS

- 6.1 Financial - None.
6.2 Personnel - None
6.3 Other - None

7 BACKGROUND PAPERS

- 7.1 None

AUTHOR'S NAME	Jill Totney
DESIGNATION	Democratic Services Manager
CONTACT INFO	jtotney@eastlothian.gov.uk x7225
DATE	31 October 2013



**SUMMARY OF CONTRACTS AWARDED WITH A VALUE OF £150,000 AND ABOVE
FOR THE PERIOD 29 AUGUST – 31 OCTOBER 2013**

Originator	Report Title/Project Summary	Contract Awarded To	Contract Value	Members' Library Bulletin & Reference
Depute Chief Executive (Partnership and Services for Communities)	Proposed Temporary Modular Accommodation and Associated Works at Windygoul Primary School, Tranent	Clark Contracts Ltd, Paisley	£276,956.71	Sept 13 Bulletin, Ref: 191/13

31 October 2013

REPORT TO: Cabinet
MEETING DATE: 12 November 2013
BY: Depute Chief Executive (Resources and People Services)
SUBJECT: Financial Review 2013/14 – to end of September (Q2)

3

1 PURPOSE

- 1.1 To record the financial position at the end of the 2nd quarter of the financial year 2013/14.

2 RECOMMENDATIONS

- 2.1 Members are recommended to;
- Note the financial performance of services at the end of September 2013 and also the continued actions being taken by management to ensure that services are delivered within approved budgets; and
 - Approve the budget adjustments outlined at Section 3.13 and 3.29.

3 BACKGROUND

Budget Summary

- 3.1 At its meeting of 12 February 2013, the Council approved a budget for the 2013/14 financial year and an outline budget for two subsequent years.
- 3.2 The 2013/14 budget can be summarised as follows;
- Government general revenue grant initially confirmed as £161.9 million.
 - Expenditure of £211.859 million. This is a decrease of £10.312 million compared to the previous year's budget and relates mostly to the removal of the Police & Fire Board requisitions (£9.883 million) and other reductions in spending (£0.429 million).

- Planned use of reserves totalling just over £2.166 million and a transfer from the Housing Revenue Account of just under £1.0 million.
 - The requirement for VERS (Voluntary Early Release Scheme) savings of £2 million in 2013/14, with a further saving of £1 million in 2014/2015.
 - The requirement for £4.690 million of other efficiency measures/savings/increased income across Business Groups.
 - A gross General Services capital budget of £28.446 million.
- 3.3 Members will be aware that on 11th September the Finance Minister presented the draft Scottish Government budget for 2014/15 along with guideline plans for 2015/16. Since then we have continued to review the budget figures and follow discussions between COSLA and the Scottish Government. At this point, our assessment of spending plans for 2014/15 - which were initially released in September 2012 - remain relatively static and that the Council can still expect little change to the level of the current Revenue Support Grant.

General Services Summary for Quarter Two

- 3.4 A summary of the financial position across each of the Business Groups at the end of September 2013 is detailed at Appendix A.
- 3.5 We have continued to provide an assessment of the progress in implementing the efficiency measures/savings/increased income required for the 2013/2014 financial year. Based upon our judgement and knowledge, each Business Group has been assigned a category reflecting our assessment of progress being made against the planned 2013/14 efficiency savings. The categories are as follows;
- Red – Less than 50% of budgeted efficiency savings are likely to be achieved by the end of the year;
 - Amber – Between 50%-100% of budgeted efficiency savings are likely to be achieved by the end of the year;
 - Green – 100% of budgeted efficiency savings are likely to be achieved by the end of the year.
- 3.6 The unadjusted position at the end of September 2013 is an under-spend compared to budget of £1.1 million. Of this total £593,000 relates to the Devolved School Management budgets. The position at the end of Q2 is further complicated by the inclusion of VERS severance costs for those staff that have now left the Council's employment but also the associated reduction in staffing costs.
- 3.7 In overall terms there has been little significant change since the Q1 position reported to Cabinet in September – a number of Groups are likely to finish the year in an over-spend position but it is likely that these

will be balanced by other Groups which will under-spend their allocated budgets together with the receipt of some unplanned income. The Finance Risk Ratings have therefore remained fairly static since the September report with one rating being downgraded from 'High' to 'Medium' and a rating being upgraded from 'Medium' to 'High'. It is my current assessment that, in overall terms, the Council will use the level of reserves planned as part of setting the 2013/14 budget.

3.8 All the Corporate Income budgets such as Council Tax, Joint Board requisitions and debt charges are performing in line with expectations. At this point in the year council tax income is ahead of budget. However, awards under the new Council Tax Reduction scheme are more than budgeted and at the end of the year we will need to assess how much of a bad debt provision needs to be set aside.

3.9 The majority of the budget pressures are a continuation of trends noted in the Q1 report. Within **Resources and People Services** this includes;

- **Children's Wellbeing Group** – there is a high likelihood that the Children's Wellbeing Group will overspend their budget allocation for 2013/14 by approximately £170,000. This is a reduction from the figure noted at Quarter One. Current cost pressures relate to external placement costs, adoption costs and legal expenses, statutory grants/payments to young people leaving care as well as the non-achievement of residual Efficient Workforce Management savings. However, the Group has contributed an additional net £479,000 staffing efficiency towards the corporate VERS programme.
- **Pre-School** – in this Group the budget pressures derive from delays in achieving 2012/13 efficiency savings as well as elements of the required 2013/14 efficiency savings. In addition, an increase in nursery class numbers, without any additional budget provision, has increased the costs for 2013/14.
- **Additional Support for Learning Group** – although the Group is expected to meet the efficiency targets set for 2013/14 we note a continuation of over-spends in two specific areas highlighted in previous reports. The first area of overspend is in relation to the transport budgets due to an increased number of routes, pupils and contract prices. The second area of overspend is in relation to the External Provision budget. This budget is used to fund the school fees for those pupils with complex needs who do not attend the Council's own schools. If not managed down by the end of the year, our current estimate is that these factors, when combined with under-spends in other areas, could generate a net over-spend of almost £214,000 for the Group although this is also slightly less than the figure noted at the end of Q1.

3.10 At the end of September the majority of schools are reporting under-spends on their budgets. As part of the Q1 report, Cabinet approved a change in the charging approach for Janitorial Services pending final agreement on the future shape of the service. This involves charging the

full cost of the service to the users – particularly the Primary School Group. While these recharges are yet to be processed it means that the **Primary School Group** is now likely to exceed the 2013/14 budget allocation. Accordingly, the finance risk rating has been increased.

- 3.11 In relation to the **Pre School and Additional Support for Learning Groups**, management is working on a number of actions that could remedy some of the possible overspends. This includes working towards a common policy for transport provision which will aim to strike a more appropriate balance between spending and the available resources.
- 3.12 As part of the Q1 report I highlighted the potential for ‘windfall’ receipts relating to the **PPP contract**. Since then, one element of recovery has now been made and I am increasingly confident that further recoveries will be secured before the end of the financial year. Both these amounts will go some way to reducing the effect of the potential overspends noted above within the Resources and People Directorate.
- 3.13 As part of our work on the recovery of the PPP payments we have also reviewed the budget provision for the PPP unitary and insurance payments and have assessed that there is now potential to transfer some of the current allocated budget to support other areas within the Directorate. Accordingly, we are recommending that £150,000 is transferred to support the Pre-School Group – with particular reference to the additional nursery places noted at Section 3.9, and that £70,000 is transferred to the Children’s Wellbeing Group.
- 3.14 Within the **Health & Adult Care Partnerships Directorate** the second quarter of 2013/2014 has seen;
- Ongoing review of care packages.
 - Maximisation of grant income, including the use of additional funds from the extended Health & Social Care Partnership;
 - Review of all budgets;
 - Constraining of non-care costs such as staffing and supplies.
- 3.15 At the end of Q2, the unadjusted over-spend in this area was £552,000. However, this figure is skewed by the inclusion of ‘one-off’ severance costs of £275,000 relating to the VERS scheme. When these costs are discounted, the adjusted over-spend of £277,000 corresponds closely to the level of overspend at Q1 suggesting that the recent interventions are having a positive effect and that the financial pressures within this Group are being managed. However, significant financial and demographic pressures exist within this Group and it will take concerted management action over the remainder of the year to bring spend within approved budget levels.
- 3.16 The majority of **Partnerships & Services for Communities** budgets are performing as expected at the end of Q2. However, there continue to be

a number of areas which have a high likelihood of over-spend. These are as follows;

- **Healthy Living** – relating to overspends on gas, electricity and non domestic rates. However, control action continues to be taken to maximise the chances that this budget area will end the financial year within the 2013/14 approved budget.
- **Public Transport** – relating to the Supported Buses contract and the Concessionary Fares budget. Management is aware of the position and is reviewing the options open to the Council in relation to concessionary fares. These options will be reported to members in due course
- **Community Partnerships** – this Group has been assessed as High financial risk over the last couple of years. Our assessment continues to be that to deliver the budget within balance for 2013/14 will require the delivery of an increased Efficient Workforce Management saving of £150,000 over the remainder of the year. Officers are currently examining a number of ways in which some of this may be achieved.

3.17 A number of steps taken over the past few months have significantly improved the chances that the **Facilities Management** service will end the 2013/14 financial year within budget. These include the following;

- The agreement that the service should recover the full cost of providing janitorial services to schools.
- A close control of costs within the Building Cleaning service leading to an improvement in the financial position.

3.18 In addition, we are also increasingly hopeful that the Community Development budget will end the year within budget. Although the full efficiency savings of £150,000, relating to of non-domestic rates relief, is unlikely to be met, we are seeing other savings emerge in areas such as staffing costs.

Housing Revenue Account

3.19 As a result of the 2012/13 financial year-end, the Housing Revenue Account currently sits with reserve balances totalling £5.576 million.

3.20 At the end of September 2013 the main revenue budgets were £92,000 over spent. At present, repairs and staffing costs are generally in line with budgets. The principal causes of the deficit relate to rent income and voids levels, in particular the slower than anticipated rate at which the new affordable housing properties are moving onto the rent roll and higher than expected void levels. By the end of the year the effect of this will be minimised by smaller than expected debt charges.

3.21 Details of the Housing Revenue Account capital budgets are included at Appendix C. The total capital budget approved for the HRA was £25.630

million. To the end of September 2013, the actual spend was £10.518 million representing 41% of the annual total.

3.22 As part of the 2013/14 housing budget preparation the spending on new affordable units was anticipated to be £14.335 million. As part of their ongoing work, officers review progress with the various affordable housing projects and their likely delivery dates. The updated projections have now identified a more likely spend for the 2013/14 year of £9.892 million – with the slippage of project spend on the following sites into 2014/15;

- Jooglie Brig
- Victoria Park
- Pinkie Mains
- Kellie Road

3.23 As reported at Q1, there has been a high number of Mortgage to Rent applications and by the end of September the Council had spent all the annual budget allocation for the year with a current spend of £768,000 compared to a budget of £646,000. There is one further Mortgage to Rent application in the 'pipeline' to be completed during 2013/14. No further applications are being considered - unless there are significant operational reasons for doing so. Mortgage to Rent applicants continue to be directed towards other registered social landlords.

3.24 A number of Open Market Acquisition purchases initiated in 2012-13 have also completed in 2013/14. The value of these purchases, up to the end of September, total £625,000 and will be funded by the carry-forwards from previous years.

General Services Capital Budgets

3.25 As part of the Q1 report I highlighted the work that was underway to refresh the capital plan in light of 2012-13 year-end position and some other known changes to project spending profiles and the requirement to progress work on projects such as Gullane and Windygoul Primary Schools.

3.26 This work has now been completed resulting in an amended Capital Plan for 2013/16 which has been included at Appendix D. The main changes in relation to 2013/14 are as follows;

- The inclusion of project carry-forwards from 2012/13. As an example, there was slippage of £727,000 in the planned 2012/13 spending on the North Berwick Museum project. This has been added to the revised 2013/14 project budget.
- The revision to spend profiles for the various projects. As an example, the spending on the Peppercraig depot project has now been revised

to reflect the most current likely flow of payments relating to the project.

- Increases in the budgeted cost for those projects which are likely to exceed the original approved amounts. This includes budget adjustments to various projects including Dunbar Community Facility, John Gray Centre, Ormiston Community Centre and the various Legacy projects (3G pitches and Meadowmill alterations).
- The addition of a new capital project relating to the Gypsy Traveller site, funded largely from Scottish Government and Midlothian Council contributions.
- The inclusion of a number of other projects such as work on relocating the Haddington Day Centre and provision of a lift within North Berwick Community Centre. These have also been part funded by external contributions.
- The inclusion of new projects relating to the need for additional classroom space at a number of primary schools. This category includes new and expanded projects at Gullane & Windygoul primary schools.
- Expected capital income for the year increases from £11.165 million to £12.754 million, largely from the slippage of asset sales from 2012/13 to 2013/14 but also the expected receipt of additional project funding in relation to developer contributions and Scottish Government grant.

3.27 As a result of these changes the debt charges for the year are expected to be approximately £160,000 less than budgeted. All the changes made to the capital plans are within the capital spending limits previously agreed by the Council at its meeting of February 2013.

3.28 Appendix E compares the revised capital budget totals against the spending up to the end of September. The actual spend totalled £10.559 million which represents 32% of the annual total.

Budget Adjustments

3.29 A number of significant budget adjustments have been carried out in the last three months. These include the following;

- The confirmation of £5.5 million in Revenue Support Grant from the Scottish Government relating to the Council Tax Reduction Scheme, Crisis Grants and Community Care grants;
- The receipt of £70,000 in Revenue Support Grant from the Scottish Government relating to Curriculum for Excellence;
- The transfer £30,000 from Human Resources to the Customer Services Group relating to work transferred to the Contact Centre;

- A number of inter-Group adjustments relating to the creation of the East Lothian Works team;
- The transfer of £15,000 from Children’s Wellbeing to Democratic Services relating to the Children’s Panel

4 POLICY IMPLICATIONS

4.1 None.

5 EQUALITIES IMPACT ASSESSMENT

5.1 This Report is not applicable to the wellbeing of equalities groups and an Equalities Impact Assessment is not required.

6 RESOURCE IMPLICATIONS

6.1 Financial – as described above

6.2 Personnel - none

6.3 Other – none

7 BACKGROUND PAPERS

7.1 Council 12 February 2013 – Item 1 – Council Financial Strategy 2013/16

7.2 Members Library 133/13 – Managing the Workforce – VER Scheme.

7.3 Cabinet 9 April 2013 – Item 6 – HRA Capital Investment Plan 2013/14

7.4 Council 25 June 2013 – Item 5 – Revision to Chief Officer Structure.
























7.5 Audit & Governance Committee 23 July 2013 – All papers

7.6 Council 27 August 2013 – Item 6 – 2012/13 Year-End Financial Review

7.7 Cabinet 10 September 2013. – Item 2 – Financial Review 2013/14 Q1

AUTHOR’S NAME	Jim Lamond
DESIGNATION	Head of Council Resources
CONTACT INFO	jlamond@eastlothian.gov.uk
DATE	28/10/2013

REVENUE BUDGET PERFORMANCE at 30 September 2013

	Budget for the year £000	Actual to 30/09/13 £000	Budget for the period £000	(Surplus) / Deficit for period £000	(Surplus) / Deficit %	Financial Risk Assessment	Change since last assessment	Progress with efficiency savings etc	Notes
Resources & People Services									
Children's Wellbeing	11,857	6,351	6,119	232	3.8%	High	No change		
Pre-school Education & Childcare	5,382	4,582	4,488	94	2.1%	Medium	No change		
Additional Support for Learning	7,854	5,370	5,237	133	2.5%	High	No change		
Schools - Primary	29,384	12,757	12,998	(241)	(1.9%)	Medium	No change		
Schools - Secondary	36,316	16,881	16,998	(117)	(0.7%)	Medium	No change		
Schools Support Services	2,797	1,207	1,258	(51)	(4.1%)	Low	No change		
Financial Services	1,837	346	454	(108)	(23.8%)	Low	No change		
Revenues & Benefits	1,351	161	313	(152)	(48.6%)	Low	No change		
IT Services	1,865	1,057	1,090	(33)	(3.0%)	Low	No change		
Law & Licensing	503	240	257	(17)	(6.6%)	Low	No change		
Human Resources	1,105	545	597	(52)	(8.7%)	Low	No change		
Governance/Internal Audit	1,877	954	949	5	0.5%	Low	No change		
	102,128	50,451	50,758	(307)	(0.6%)				
Health & Adult Care Partnership									
Adult Wellbeing	44,868	20,171	19,619	552	2.8%	High	No change		
	44,868	20,171	19,619	552	2.8%				
Partnerships & Services for Communities									
Community Housing	2,738	1,712	1,962	(250)	(12.7%)	Low	No change		
Housing Revenue Account	0	(5,260)	(5,353)	93	(1.7%)	Low	No change		
Planning & Environmental Services	3,454	1,570	1,820	(250)	(13.7%)	Low	No change		
Property Services	2,200	1,745	1,734	11	0.6%	Low	No change		
Facility Support	3,099	820	631	189	30.0%	Medium	Decrease		
Landscape & Countryside Mgt	5,604	2,502	2,646	(144)	(5.4%)	Low	No change		
Transport & Waste Services	13,073	4,796	5,533	(737)	(13.3%)	High	No change		
Communications & Marketing	448	227	241	(14)	(5.8%)	Low	No change		
Corporate Policy	1,594	887	920	(33)	(3.6%)	Low	No change		
Community Partnerships	1,158	721	561	160	28.5%	High	No change		
Cultural Services	4,234	2,130	2,085	45	2.2%	Medium	No change		
Community Development	3,312	1,569	1,625	(56)	(3.4%)	Medium	No change		
Healthy Living	4,351	1,914	1,852	62	3.3%	High	No change		
Economic Development	1,979	1,193	1,330	(137)	(10.3%)	Low	No change		
Customer Services	1,423	984	1,011	(27)	(2.7%)	Low	No change		
	48,667	17,510	18,598	(1,088)	(5.9%)				
Total All Departments									
	195,663	88,132	88,975	(843)	(0.9%)				
Corporate Management									
Revenue Support Grant (inc. NNDR)	(167,485)	(73,432)	(73,432)	0	0.0%	Low	No change		
Debt Charges/Asset Management	13,979	4,908	4,908	0	0.0%	Low	No change		
Council Tax	(41,271)	(42,563)	(42,553)	(10)	0.0%	Low	No change		
Joint Board Requisitions	674	337	337	0	0.0%	Low	No change		
Other	1,671	634	888	(254)	(28.6%)	Low	No change		
HRA Transfer	(995)	0	0	0	0.0%	Low	No change		
Use of Reserves	(2,236)	0	0	0	0.0%	Low	No change		
	(195,663)	(110,116)	(109,852)	(264)	0.2%				
Total All Council									
	0	(21,984)	(20,877)	(1,107)					

Financial Risk	Factors	Implications
High	<ul style="list-style-type: none"> - The Business Group has been assessed as likely to overspend in the financial year - There has been a history of overspending within Units / Groups - There are new or revised funding arrangement and / or legislature changes with financial significance - Trading Accounts are in deficit for the year. -Grant schemes, on which the Council is reliant are either unconfirmed or have not been confirmed -The service is demand led and the Council has restricted control over the level and form of service - New Services are planned 	<ul style="list-style-type: none"> -Cabinet & Members Library reports with financial implications are not passed under delegated powers -Directors / Heads of Service will be asked to prepare a financial recovery plan -The Head of Council Resources may take enforcement action to ensure budgetary control
Medium	<ul style="list-style-type: none"> - There is significant potential that Business Group could overspend in the financial year - There have been previous incidences of some overspending within Units / Groups - There are new or revised funding arrangement and / or legislature changes with financial significance - Trading Accounts are having difficulty meeting financial targets -Grant schemes, on which the Council is reliant are either unconfirmed or have not been confirmed 	<ul style="list-style-type: none"> -Members library reports are only passed when financial implications are addressed -Directors / Heads of Service will be asked to identify actions necessary to ensure expenditure is within budget by the year-end.
Low	<ul style="list-style-type: none"> -Finances are generally under control for the current financial year -Stable legislature, trading and funding environment -The service is supply led - i.e. the Council can decide the level and form of service -Finances in previous financial years have been controlled -Grant schemes are stable and not anticipated to change significantly 	<ul style="list-style-type: none"> -Members library reports are approved promptly under delegated powers

HOUSING CAPITAL SPEND & FINANCING 2013/14

	Budgeted (£000s)	Actual (£000s)	Remaining Spend (£000s)
House Purchases			
Open Market Acquisitions	0	625	625
Mortgage to Rent	646	768	122
Total Gross House Purchase spend	646	1,393	747
Modernisation Spend			
Fees	528	0	(528)
Disabled Adaptations	750	211	(539)
Central Heating/Leasing Purchases	2,114	681	(1,433)
Electrical Re-wiring	1,700	589	(1,111)
Fencing Programme	50	13	(37)
Energy Efficiency	50	8	(42)
Kitchen Replacement Prog.	1,650	487	(1,163)
Re-roofing Programme	300	5	(295)
Stair Improvement Programme	30	0	(30)
Extensions/Roughcast/Building Envelope	1,400	224	(1,176)
Play Areas	50	0	(50)
Dispersed Alarms	50	2	(48)
Local Initiatives:Projects	200	6	(194)
Window & Door Replacement Prog.	10	7	(3)
Bathroom Replacement	942	444	(498)
Lead Water Pipes	200	220	20
Asbestos Works	400	340	(60)

	Budgeted (£000s)	Actual (£000s)	Remaining Spend (£000s)
Groundcare Projects	100	0	(100)
IT Projects	125	0	(125)
Total Modernisation spend	10,649	3,237	(7,412)
Gross Affordable Homes spend	14,335	5,888	(8,447)
Gross Total Housing Capital Spend	25,630	10,518	(15,112)
Financed By;			
Grants	5,662	454	(5,208)
Assets Sales/Capital Reserves	1,052	345	(707)
Borrowing	18,916	9,719	(9,197)
	25,630	10,518	(15,112)

Project Name - Gross Capital Spend	Total Planned Spending				
	2013/14 £000	2014/15 £000	2015/16 £000	(2013-2016) £000	
Abbey, North Berwick Care Home refurbishment	-		-	0	Project Under Consideration
New Day Centre - Gullane	2,512	42	-	2,554	
Fa'side Tranent - New residential home and day centre	6,802	1,798	131	8,731	
Haddington Day Centre	95	5	-	100	Project Under Consideration
Haddington Town House - Steeple Work	241	-	-	241	
PV installations in public buildings	15	-	-	15	
Gypsy Traveller Site	492	-	-	492	
Property Renewals	585	800	900	2,285	
Property Fees/Internal Architect etc fees	1,445	1,445	1,445	4,335	
Environment Fees	111	111	111	333	
Brunton Hall - Theatre and Main Hall refurbishment	100	225	-	325	
Dunbar - new Community facility	75	-	-	75	
Dunbar Town House Museum	46	-	-	46	
John Gray Centre Haddington	79	-	-	79	
Prestongrange Museum	10	-	-	10	Project Under Consideration
Port Seton Sports Hall	-	-	150	150	
Whitecraig Community Centre	50	50	400	500	
Ormiston Community Centre	15	-	-	15	
Village Halls - Matched Funding	50	50	50	150	
Tranent Library	105	-	-	105	
North Berwick Museum - refurbishment	737	20	-	757	
North Berwick Community Centre - Lift	0	70	-	70	
Community Intervention	200	180	200	580	
Red School Prestonpans	99	1	-	100	
Support for Business - Land Acquisition/Infrastructure/Broadband	500	300	-	800	
Support for Business - Town Centre Regeneration	550	450	-	1,000	
Reprovision of Pathways Home	500	225	-	725	
Dunbar - Lochend Campus	202	-	-	202	
Dunbar - Lochend Campus/Additional Classrooms	30		500	530	
Gullane PS - Additional Space	142	-	-	142	
Haddington IS / St Mary's RCPS - New shared Campus	276	-	-	276	
Sandersons Wynd PS - additional Classrooms	-	200	300	500	
Dunbar Grammar School Extension	150	20	100	270	
Musselburgh Grammar School Extension	-	-	-	0	Project Under Consideration

Ross High School Extension	-	-	-	0	Project Under Consideration
Knox Academy Expansion	-	-	-	0	Project Under Consideration
Dirleton Classroom Extension	918	13	-	931	
Dunbar Primary - Phase 2 Comms Unit	-	-	150	150	
Macmerry PS Extension	337	12	-	349	
Ormiston - Extension/Temp Units	-	-	-	0	
Pinkie St Peter's PS Extension/Levenhall Nursery reprovision	600	2,172	1,900	4,672	
Law Primary School	20	80	2,000	2,100	
Windygoul PS - Permanent Additional Classrooms	50	750	2,400	3,200	
Windygoul PS - Temp Units	110	-	-	110	
Wallyford PS - Temp Units	-	-	120	120	
Wallyford PS - New PS/Pro-rata ELC share	-	50	50	100	
Replacement Vehicles	2,838	2,000	1,350	6,188	
East Lothian Legacy Project - 3G Pitches	45	-	-	45	
Pavilions	150	250	50	450	
East Lothian Legacy Project - Meadowmill Alterations	125	-	-	125	
Sports Centres - refurbishment & equipment	200	200	200	600	
Musselburgh Tennis Court Upgrade	-	60	-	60	
Expansion of 3G pitch provision	1,541	40	-	1,581	
Schools IT	938	545	923	2,406	
Corporate IT Program	240	216	216	672	
Server Room Upgrade	250	0	0	250	
Core Path Plan Implementation	50	100	50	200	
John Muir Country Park Play Area	2	-	-	2	
Cuthill Park	87	-	-	87	
Lochend Road - Play Area	97	-	-	97	
Amenity Services Machinery & Equipment - replacement	167	177	100	444	
Cemeteries - Extensions/Allotments	469	344	54	867	
Coastal Car Parks/Toilets	730	550	450	1,730	
Peppercraig Depot Haddington	400	200	50	650	
Coastal Protection/Flood	300	300	300	900	
Promenade Improvements - Fisherrow	25	25	-	50	
Pencaitland Paths/Community Car Park	200	0	-	200	
Cycling Walking Safer Streets (Ring-fenced grant funded)	104	153	120	377	
Roads	5,350	5,250	5,500	16,100	
New Salt Barn	30	-	-	30	
QMU Triangle	-	500	2,000	2,500	
Parking Improvements	300	300	250	850	
Purchase of New Bins	153	153	63	369	
	33,040	20,432	22,583	76,055	

GENERAL SERVICES CAPITAL SPEND - TO SEPTEMBER 2013

Name of Project	Budgeted Spend 2013/14 £000	Actual Spend 2013/14 £000	Over/(Under) (£000s) £000	Notes
New Day Centre - Gullane	2,512	1,448	(1,064)	
Fa'side Tranent - New residential home and day centre	6,802	1,805	(4,997)	
Haddington Day Centre	95	-	(95)	
Haddington Twon House - Steeple	241	-	(241)	
Mobile Working	-	13	13	
PV installations in public buildings	15	13	(2)	
Gypsy Traveller Site	492	-	(492)	
Property Renewals	585	163	(422)	
Property Fees/Internal Architect etc fees	1,445	-	(1,445)	
Environment Fees	111	-	(111)	
Brunton Hall - Theatre and Main Hall refurbishment	100	34	(66)	
Dunbar - new Community facility	75	1	(74)	
Dunbar Town House Museum	46	33	(13)	
John Gray Centre Haddington	79	-	(79)	
Prestongrange Museum	10	-	(10)	
Whitecraig Community Centre	50	37	(13)	
Ormiston Community Centre	15	2	(13)	
Village Halls - Matched Funding	50	-	(50)	
Tranent Library	105	5	(100)	
North Berwick Museum - refurbishment	737	521	(216)	
Community Intervention	200	-	(200)	
Red School Prestonpans	99	-	(99)	
Support for Business - Land Acquisition/Infrastructure/Broadband	500	-	(500)	
Support for Business - Town Centre Regeneration	550	-	(550)	
Reprovision of Pathways Home	500	-	(500)	
Dunbar - Lochend Campus	202	51	(151)	
Dunbar - Lochend Campus/Additional Classrooms	30	-	(30)	
Gullane PS - Additional Space	142	119	(23)	
Haddington IS / St Mary's RCPS - New shared Campus	276	17	(259)	
Dunbar Grammar School Extension	150	-	(150)	
Dirleton Classroom Extension	918	457	(461)	
Macmerry PS Extension	337	301	(36)	
Pinkie St Peter's PS Extension/Levenhall Nursery reprovision	600	301	(299)	
Law Primary School	20	-	(20)	
Windygoul PS Permanent Additional Classrooms	50	9	(41)	
Windygoul PS - Temp Units	110	-	(110)	
Replacement Vehicles	2,838	972	(1,866)	
East Lothian Legacy Project - 3G Pitches	45	-	(45)	
Pavillions	150	38	(112)	
East Lothian Legacy Project - Meadowmill Alterations	125	-	(125)	
Sports Centres - refurbishment & Equipment	200	74	(126)	
Expansion of 3G pitch provision	1,541	258	(1,283)	
Schools IT	938	474	(464)	
Corporate IT Program	240	77	(163)	
Server Room Upgrade	250	-	(250)	
Core Path Plan Implementation	50	-	(50)	
John Muir Country Park Play Area	2	-	(2)	
Cuthill Park	87	-	(87)	
Lochend Road - Play Area	97	-	(97)	

GENERAL SERVICES CAPITAL SPEND - TO SEPTEMBER 2013

Name of Project	Budgeted Spend 2013/14 £000	Actual Spend 2013/14 £000	Over/(Under) (£000s) £000	Notes
Amenity Services Machinery & Equipment - replacement	167	127	(40)	
Cemeteries - Extensions/Allotments	469		(469)	
Coastal Car Parks/Toilets	730	56	(674)	
Peppercraig Depot Haddington	400	3	(397)	
Coastal Protection/Flood	300	55	(245)	
Promenade Improvements - Fisherrow	25	-	(25)	
Pencaitland Paths/Community Car Park	200	-	(200)	
Cycling Walking Safer Streets (Ring-fenced grant funded)	104	-	(104)	
Roads/CWSS/Hotspot Safety Improvements	5,350	3,095	(2,255)	
Roads: safety hotspot surveys & improvements	30	-	(30)	
Parking Improvements	300	-	(300)	
Purchase of New Bins	153	-	(153)	
	33,040	10,559	(22,481)	

REPORT TO: Cabinet

MEETING DATE: 12 November 2013

BY: Depute Chief Executive (Resources and People Services)

SUBJECT: Freedom of Information (Scotland) Act 2002 and
Data Protection Act 1998 – Compliance Statistics

4

1 PURPOSE

- 1.1 To report on the Council's compliance with the 20 working day timescale laid down by the Freedom of Information (Scotland) Act 2002 for the period from 1 April 2013 to 30 September 2013.
- 1.2 To report on the Council's compliance with the 40 calendar day timescale laid down by the Data Protection Act 1998 for the period from 1 April 2013 to 30 September 2013.

2 RECOMMENDATIONS

- 2.1 To note the report.

3 BACKGROUND

- 3.1 **Freedom of Information (Scotland) Act 2002** - During the period 1 April 2013 to 30 September 2013, East Lothian Council operated in accordance with the statutory requirements, particularly:

Requests for information – to be answered within 20 working days

Requests for review – to be answered within 20 working days by a Chief Officer

If requesters remained dissatisfied after completing this process, then they had a legal right to appeal to the Scottish Information Commissioner (SIC).

3.2 Freedom of Information (FOI) statistics are recorded by Law & Licensing. Guidance on how to handle information requests, and requests for review, are on the Council's intranet, accessible to all employees.

3.3 The total number of FOI requests received from 1 April 2013 to 30 September 2013 was **528**, an increase from the previous half year (477). Overall numbers of FOI requests have been increasing steadily since the Freedom of Information (Scotland) Act 2002 came into force.

This figure includes information requests processed under the Environmental Information (Scotland) Regulations 2004 (EIR). A split of the FOI and EIR requests is provided at 3.5 of this report.

3.4 The total number of requests for review received from 1 April 2013 to 30 September 2013 was **14**, a slight increase from the previous half year (10).

This figure includes reviews processed under the Environmental Information (Scotland) Regulations 2004 (EIR). A split of the FOI and EIR reviews is provided at 3.6 of this report.

3.5 Since January 2013, the recording system used has distinguished between FOI requests and requests falling within the Environmental Information (Scotland) Regulations 2004 (EIR). The table below provides a breakdown of the response timescales for both FOI and EIR requests between 1 April 2013 to 30 September 2013:

	FOI		EIR	
On time	376	94%	64	96%
Late	24	6%	3	4%
Lapsed/Written Off	0		0	
Date of Completion Unknown	0		0	
Cancelled/Withdrawn	2		1	
Suspended	8		0	
Ongoing	49		1	
TOTAL ACTIONED	410		68	

It should be noted that seven information requests were delayed as the information required was held by the schools which were closed for the summer holidays. This resulted in a breach of the legislation.

3.6 The table below provides a breakdown of the response timescales for FOI and EIR requests for review between 1 April 2013 to 30 September 2013:

	FOI		EIR	
On time: Within 20 Working Days	8	89%	4	100%
Late	1	11%	0	-
Upheld	7		3	
Partially Upheld	0		0	
Overtaken	0		1	
Additional Info Provided	1		0	
Invalid	1		0	
Total Received	10		4	
Total Actioned	9		4	
Still Outstanding	1		0	
Grand Total of Internal Reviews	14			

3.7 The top three enquirers were:

- 1) General Public
- 2) Commercial Organisations
- 3) Journalists

3.8 **Data Protection Act 1998** – East Lothian Council operates in accordance with the statutory requirements, particularly:

Requests for personal information (“Subject Access Requests”) – to be answered within 40 calendar days

3.9 Data Protection (DP) statistics are recorded by Law & Licensing. Guidance on how to handle requests for personal information (“Subject Access Requests”) are on the Council’s intranet, accessible to all employees.

3.10 The total number of DP “Subject Access Requests” received from 1 April 2013 to 30 September 2013 was 42. (During the previous quarter year 28 requests were received):

Completed on time (within 40 calendar days)	27	90%
Late	3	10%
Suspended	1	
Withdrawn	1	
Ongoing	10	
Total Actioned	30	

It should be noted that two of the “Subject Access Requests” were delayed because the information required was held by the schools which were closed for the summer holidays. This resulted in a breach of the legislation.

4 POLICY IMPLICATIONS

4.1 None.

5 EQUALITIES IMPACT ASSESSMENT

5.1 This report is not applicable to the well being of equalities groups and an Equalities Impact Assessment is not required.

6 RESOURCE IMPLICATIONS

6.1 Financial - None

6.2 Personnel - None

6.3 Other – None

7 BACKGROUND PAPERS

7.1 None

AUTHOR'S NAME	Dr Renate Gertz
DESIGNATION	FOI & DP Compliance Officer
CONTACT INFO	X 7993, email: rgertz@eastlothian.gov.uk
DATE	9 October 2013

REPORT TO: Cabinet
MEETING DATE: 12 November 2013
BY: Depute Chief Executive (Resources and People Services)
SUBJECT: Annual Pensions Report - 2012/13

5

1 PURPOSE

- 1.1 To summarise the early retirement activity within the financial year 2012/13, in accordance with External Audit requirements and Council Policy.

2 RECOMMENDATIONS

- 2.1 That Cabinet note the content of the report with regard to the pension activity in the financial year 2012/13.

3 BACKGROUND

3.1 Council's Retirement Activity in Financial Year 2012/13

There are currently four types of pensionable retirements available to the Council for all employees excluding Teaching employees (see paragraph 3.2), they are:

- **Due to Efficiency or Redundancy at the discretion of the Council** - This allows the individual, aged over 55 years (50 if in the Scheme before 5 April 2006), at the discretion of the Council to retire early drawing their pension without any actuarial reduction being applied. In this case the strain costs relating to the early release of the pension are borne by the Council. With effect from 1 April 2009, strain costs are paid by the Council in full at the date of retirement, previously this was repaid to the pension fund over a maximum period of five years.

Following a report to East Lothian Council on 7 December 2010 the Council does not award any added years.

- **Ill-Health retirement** - This occurs where an employee is confirmed by Occupational Health as being permanently incapable of discharging efficiently their duties because of ill-health or infirmity of mind or body. The employee is permitted early access to enhanced

pension in accordance with the Superannuation regulations and requires no exercise of Council discretion. The costs are fully borne by the pension fund.

- **Rule of 85** - This is where an individual aged between 50 and 60 can ask to be considered for voluntary retiral if their service and age combined comes to 85 or over. In this instance there is no enhancement to the pension the individual receives, however there are costs to the Council for the early release of the pension. The final decision rests with the Council. The Council bears the strain costs to the pension fund for the early payment of the benefits.
- **Flexible Retirement** – This is a discretionary element of the pension regulations which allows employees who meet certain criteria to draw their pension and continue working on a reduced hours basis. To qualify the employee must be over 55 years old and have a minimum of 2 years pensionable service and they must reduce their working hours by a minimum of 40%. They must however have the Councils agreement as there can be cost to the Council for the early release of the individuals pension. If agreed the employee then continues working on the reduced hours and may opt to rejoin the pension fund while drawing the pension benefits they have already accrued. Alternatively in exceptional circumstances the employee may reduce their grade. This is most likely to happen as a result of a service review and must be to an existing vacancy within the Council.

3.2 **Teaching Employees** - Cabinet approved a report on 9 March 2004 establishing the Policy for Retirement of Teaching Staff within the Council encompassing the “Teachers (Compensation for Premature Retirement and Redundancy) (Scotland) Regulations 1996” for Teaching pensions. This discretion allowed the Council to enhance teachers retirement packages by crediting up to 10 added years of service before calculating the pension entitlement. In a report to East Lothian Council on 7 December 2010 the Council removed this discretion and does not now award any added years.

3.3 A summary of the pension retirements in the financial year 2012/13 is as follows:

- **Compulsory/Voluntary Early Retirement/Severance** – There were 3 Compulsory/Voluntary Early Retirement/Severances in the financial year 2012/13. One of which was a compulsory redundancy.

Department	Total	Compulsory	Voluntary
People	1	-	1
Communities	1	1	-
Support	1	-	1

- **Medical Retirement** – There were 16 superannuated medical retirements in the financial year 2012/13 including 2 teaching posts, across the Council departments.

Department	Total
People	6
Communities	9
Support	1

- **Rule of 85** – There were no Rule of 85 retirements in the financial year 2012/13.
- **Flexible Retirement** – There were 8 flexible retirements approved in the financial year 2012/13.
- **Teaching Retirement Policy** – in the financial year 2012/2013 there were no voluntary early retirals under the teacher’s retirement policy.

- 3.4 Details of the Council’s financial commitments relating to pensions are included in the 2012/13 Financial Statements. As a result of ongoing pension costs arising from decisions taken in earlier years, in addition to the “up-front” strain costs now due in the year they accrue, during 2012/13 the Council spent £0.965 million (in 2011/12 £2.128 million) on early retirements for Local Government Workers and £696,123 (in 2011/12 £591,848) on early retirements for teachers.
- 3.5 The Council has a liability to pay pension costs in the future. At 31 March 2013 this liability was actuarially assessed at £110.841million (and in 2012 at £94.03 million). As this liability is unfunded, it is a liability to be met from future Council Tax and grant income. The intention of the pension Fund is to recover this liability over the next 20 years.
- 3.6 In addition to the above figures, the Council also makes ‘ex gratia’ pension payments to 136 former employees who worked less than 16 hours per week and were aged under 50 at 31 December 1993 and were unable to join the LGSS pension scheme under the statutory rules at the time. The value of these payments during 2012/2013 was £69,307 (and in 2011/12 it was £66,870). The Council took the decision to remove this discretion at Cabinet on 9 June 2009. No new ex gratia pension payments will arise and the existing estimated value of future liabilities based on actuarial mortality estimates is £861,385 - and will therefore reduce over time.

4 POLICY IMPLICATIONS

- 4.1 The Council is required to report its pension activity annually to elected members.

5 EQUALITY IMPACT ASSESSMENT

- 5.1 It would not be applicable to undertake an Equality Impact Assessment. However, any relevant associated policies would be subject to an Equality Impact Assessment.

6 RESOURCE IMPLICATIONS

- 6.1 **Financial** - Early retirement decisions taken in earlier years have created a significant liability for current and future Council Tax payers. In the future it may be necessary to make provisions against the liability.
- 6.2 **Human Resources** - Finance and Human Resources continue to ensure that any retirements are in accordance with Council Policy and within the Standing Orders and the supporting Scheme of Delegation and also that managers are aware that any pensionable retirement meets the strict efficiency or redundancy requirements and generates the necessary savings.
- 6.3 **Other** - none

7 BACKGROUND PAPERS

- 7.1 Future Application of Discretionary Policies relating to Early Retirement and/or Severance – East Lothian Council 7 December 2010.
- 7.2 Policy on Enhanced Compensation for early Retirement on Grounds of Redundancy and Efficiency– December 2010
- 7.3 Lothian Pension Fund Website: www/lpf.org.uk

AUTHOR'S NAME	Paul Ritchie
DESIGNATION	HR Business Partner
CONTACT INFO	0162 827767 pritchie@eastlothian.gov.uk
DATE	September 2013

REPORT TO: Cabinet

MEETING DATE: 12 November 2013

BY: Depute Chief Executive (Partnership and Services for Communities) **6**

SUBJECT: Area Partnerships

1 PURPOSE

- 1.1 This report outlines and seeks approval for the framework to establish six Area Partnerships.

2 RECOMMENDATIONS

- 2.1 Cabinet agrees to the establishment of six Area Partnerships as outlined in this report and Appendices 1 and 2.
- 2.2 Cabinet notes that it will receive progress on the establishment and development of Area Partnerships.

3 BACKGROUND

- 3.1 The East Lothian Council Plan 2012-2017 states that:

“The Council will give people a real say in the decisions that matter most and provide communities with the housing, transport links, community facilities and environment that will allow them to flourish

Communities need to be supported to ensure they have the capacity to flourish. The Council is committed to ensuring that communities are empowered to develop strategies and Local Community Plans tailored to their needs and that decision making is devolved to the most appropriate local level.”

- 3.2 The Council Plan includes the commitment to: *“Establish Local Area Partnerships for all six areas of East Lothian to give local communities, Community Councils and local groups more say in local services and to*

develop Local Community Plans that will influence the achievement of the Community Planning Partnership's Single Outcome Agreement."

- 3.3 Six Area Partnerships will be established – one for each Council Ward, with the Musselburgh West and Musselburgh East and Carberry Ward being combined into one Area Partnership.
- 3.4 The framework for establishing Area Partnerships builds on the experience gained from the Local Area Forums initiative through which three Local Area Forums were established between 2009-2012. The framework sets out the objectives, role and remit and members of Area Partnerships and provides guidance on how they will operate.
- 3.5 Area Partnerships have twin objectives:
 - To fulfil the Council Plan commitments to establish Local Area Partnerships for all six areas of East Lothian and to devolve decision-making and budgets
 - To act as the local element of Community Planning enabling communities to influence the Single Outcome Agreement.
- 3.6 The roles and remit of Area Partnerships will be to:
 1. Develop an Area Plan based on a shared vision for the area and on the evidence from the Area Profile and local intelligence with a focus on reducing inequalities, prioritising prevention and early intervention and sustainability.
 2. Monitor the delivery of the Area Plan and its impact; reporting progress to the Safe and Vibrant Communities Partnership at least once a year.
 3. Show creative and active leadership to meet the challenges which people and communities face and to maximise the opportunities which arise.
 4. Oversee resource allocation devolved to the area in accordance with priorities established by the Area Plan.
 5. Act as the principal point of contact, consultation and engagement for the Council's Area Coordinators on the delivery of local services and service improvement and for the Health and Social Care Partnership's locality planning.
 6. Monitor the effectiveness of stakeholder and community engagement to develop, deliver and review the Area Plan and local service delivery; drawing on and building on existing activities of local groups and partnerships.
- 3.7 In summary, the proposed role and remit of the Area Partnerships would mean that they would have influence and power through determining local priorities set out in the Area Plan, scrutinising the delivery of local services and through showing active leadership. It is important to note that Area Partnerships will

not have direct powers to instruct council officers, make or amend council policy.

- 3.8 Area Partnerships would act as a forum for consultation on the Local Development Plan and other Council or Partnership strategies and plans such as the Local Housing Strategy and Police Ward Plans. They would also be the focus for public engagement to support the Health and Social Care Partnership's locality planning. They will work with, and could incorporate existing local co-ordination and consultative groups such as Community and Police Partnerships (CAPPs).
- 3.9 Once established, the membership, structure and method of operating of each Area Partnership will be determined locally, although they will be set up with a common structure. The precise membership and make up of each one will depend on local circumstances and experiences and the view of the local community.
- 3.10 Appendix 1 provides details of the proposed membership of Area Partnerships. The following 'principles' have guided the proposed membership of Area Partnerships:
- represent the geographic diversity of the area
 - recognise the role statutory groups are already playing in representing community interests and build on and strengthen their role
 - ensure a balance between the different interest groups across an area
 - provide opportunities for a diverse range of active groups to contribute
 - ensure that the interests of equality groups are represented.
- 3.11 Appendix 2 provides guidance on how the Area Partnerships will operate in respect of meetings, decision-making and communications.
- 3.12 It is recognised that Area Partnerships will draw heavily on the voluntary efforts of community leaders who are already involved in Community Councils, Tenants and Residents Associations, Parent Councils and other community organisations. The Chairs of the Association of Community Councils (AELCC) and Tenants and Residents Panel (ELTRP) have been consulted on the draft framework for establishing Area Partnerships. Further consultation on the proposals, in particular the membership of the Partnerships, will take place with the AELCC and ELTRP. Before each Area Partnership is established there will be consultation with the ward Councillors, Community Councils, Tenants and Residents Associations and Parent Councils in each area.
- 3.13 It is proposed that the establishment of the six Area Partnerships should be phased over 6 - 9 months, starting with establishing the first Partnership in early 2014.

- 3.14 The East Lothian Partnership and Safe and Vibrant Communities Partnership, both of which have senior representation from the Council, the AELCC and ELTRP, will have a key role to play in supporting and monitoring the development of Area Partnerships. The success of Area Partnerships will be measured by whether people and communities feel they are listened to and can influence decisions that affect their quality of life.
- 3.15 It is envisaged that Area Partnerships, their role and remit could develop over time. Progress with the establishment and development of the Area Partnerships will be reported to the Safe and Vibrant Communities Partnership and the Council's Cabinet.
- 3.16 A toolkit for evaluating Partnerships is being developed for use by the Council and the East Lothian Partnership. The effectiveness of the Area Partnerships will be evaluated using the toolkit at an appropriate time but within three years of their establishment.

4 POLICY IMPLICATIONS

- 4.1 This report provides the framework for establishing Area Partnerships which will fulfil the Council Plan commitment to establish Local Area Partnerships for all six areas of East Lothian and to devolve decision-making and budgets
- 4.2 Area Partnerships will also act as the local element of Community Planning enabling communities to influence the Single Outcome Agreement.
- 4.3 One of the ten outcomes in the Single Outcome Agreement is: *East Lothian has stronger, more resilient, supportive, influential and inclusive communities.* One of the contributory outcomes for this is that: *Our communities are well informed and everyone has the opportunity to influence decisions that matter in their local areas.* An indicator for this outcome is the % of residents reporting that they agree they can influence decisions affecting their local area.

5 EQUALITIES IMPACT ASSESSMENT

- 5.1 An equality impact assessment was undertaken on the East Lothian Single Outcome Agreement which highlights the development of Area Partnerships as making a positive contribution to equality – in particular by offering increased opportunity for participation and inclusion and opportunities to promote good relations in the community between different equality groups.
- 5.2 It is recognised that in practice of the Area Partnerships will need to consider equal opportunities and the requirements of the Equality Act. An Equality Impact Assessment will be undertaken on the proposed Toolkit for Evaluation to ensure that equality is given due regard in the partnerships future work and steps can be taken to address any gaps identified.

6 RESOURCE IMPLICATIONS

- 6.1 Financial – none. A further report to Council will provide details of devolved budgets
- 6.2 Personnel – none. Area Partnerships will be established and supported by existing Council staff
- 6.3 Other – none

7 BACKGROUND PAPERS

- 7.1 Appendix 1: Membership of Area Partnerships
- 7.2 Appendix 2: Draft Operational Guidance

AUTHOR'S NAME	Paolo Vestri
DESIGNATION	Corporate Policy and Improvement Manager
CONTACT INFO	pvestri@eastlothian.gov.uk 01620 827320
DATE	31 st October 2013

Appendix 1: Membership of Area Partnerships

Principles behind proposed membership

The selection of members for the Area Partnership should aim to:

- represent the geographic diversity of the area
- recognise the role statutory groups are already playing in representing community interests;
- ensure a balance between the different interest groups across an area;
- provide opportunities for a diverse range of active groups to contribute;
- ensure that the interests of minority groups are acknowledged.

Proposed membership

- All Elected Members for the area ⇒ between 3 and 6 per partnership
 - Councillors will be full voting members of the group
- 1 or 2 members from each Community Council ⇒ between 4 and 8 per partnership
- 1 or 2 representatives from Tenants and Residents Associations per partnership
 - There is currently large variation in the number of groups operating in each partnership area - ranging from 8 across Musselburgh to 1 in the Haddington & Lammermuir ward – which has led to the recommendation for a fixed number. It is proposed that their appointment could be co-ordinated through ELTRP to represent the interests of Tenants and Residents across the area rather than their particular local group.
- 2 representatives from Parent Councils per partnership
 - 1 from the Secondary School Parent Council
 - 1 representing Parent Councils from Primary Schools across the cluster – appointed through the East Lothian Association of Parent Council Members.
- Around 6 representatives from active community / voluntary sector / business groups through an appropriate, locally determined process. Consideration should be given to representation from established area based groups such as the Support from the Start cluster and the Community Sports Hub. Further, it is recommended that consideration should be given to appointing at least one youth representative (e.g. from the Secondary School Pupil Council). Consideration will also be given to ensuring that the health and social care sector is represented.

Process of appointing members

- Reserved places (Community Councils, Tenants and Residents Associations and Parent Councils) – groups will be contacted directly and asked to identify a member and a substitute able to represent them on the Area Partnership

- Wider community places - selected groups will be initially contacted and invited to become part of the Partnership, identifying a member and a substitute able to represent them.
- At (or after) the first annual meeting of the partnership places that are not reserved for specific groups would then be filled through an appropriate method determined locally – e.g. election, application, co-option etc.

Appendix 2: Draft Operational Guidance

Chair and Vice Chair

- The interim Chair of the Partnership will be a senior East Lothian Council official. If the interim Chair is unable to attend the meeting it is his/her responsibility to delegate this role to a suitable officer.
- A Chair of the Partnership (not an East Lothian Council elected member) will be appointed by the Area Partnership at the annual meeting, which must be held within the first year of operation, and annually thereafter.
- The Vice Chair will be appointed by the Area Partnership at its first meeting and thereafter at the annual meeting.
- If both the Chair and the Vice Chair are not at the meeting a Chair for that meeting will be chosen by those present.

Quorum

- The quorum for meetings is 50% of members +1

Meetings

- The full Partnership should meet at least 4 times per year based on need – the frequency and venue will be agreed by each Partnership
- Sub-groups can take forward business between meetings, reporting back to the Partnership as appropriate
- Agendas will be based on the Area Plan and emerging local issues
- Members of the Area Partnership can request items for future reports and updates, through the Chair
- Any local person or group can contact the Chair in advance of a Partnership meeting to raise a matter they would like to propose for the agenda. The Chair will decide if the matter is relevant in relation to the Partnership's remit and agenda. If it is not relevant for this Partnership, the Chair should assist by signposting to the appropriate organisation or group
- Meetings are open to any local person or group as observers. The Chair can invite observers to speak if their input would be relevant to an agenda item
- The Chair can invite others outside of the Partnership to present a report or speak to an item at a meeting
- An Annual Meeting will be held which is open to anyone from the area where local groups and the general public can review progress on the Area Plan

Decision Making

- Decisions should be taken in meetings wherever possible
- Decisions should be taken based on the views of the members and importantly the views of the community through active consultation and engagement processes outside of business meetings to ensure that wider views are heard

- Consensus should be reached wherever possible. In the event that the Partnership is unable to reach consensus in any matter a vote may be required
- Decisions may be taken outwith meetings on occasion e.g. emergencies or short deadlines. In these cases, the Chair should communicate with members of the Partnership by phone, email, post, etc., as appropriate, to make the decision and report the matter at the next meeting.

Communications

- Agendas, reports and minutes will be publicly available on the Council E-gov system which can be accessed through the Council website
- Minutes of meetings will be distributed as soon as possible after meetings and within one month, to enable members to follow up on actions with their groups and enable input.
- Notice of agendas and reports will be distributed (normally by email) to the Partnership members two weeks prior to the meeting
- Members should report to the groups and organisations they represent on the business of meetings using the Partnership Feedback form.

REPORT TO: Cabinet

MEETING DATE: 12 November 2013

BY: Depute Chief Executive (Partnership and Services for Communities) **7**

SUBJECT: Local Air Quality Management – Designation of Air Quality Management Area (AQMA) in Musselburgh

1. PURPOSE

- 1.1. This report informs the Cabinet of the outcomes of monitoring and assessment of local air quality across East Lothian and particularly in Musselburgh during calendar year 2012/13, in fulfilment of the Council's obligations under the Environment Act 1995, the UK National Air Quality Strategy and Scottish Air Quality Regulations.
- 1.2. The report seeks approval of the 2013 Air Quality Progress Report to progress the legal Order required by section 83 of the Environment Act 1995 to establish an Air Quality Management Area at Musselburgh High Street.

2. RECOMMENDATIONS

- 2.1. It is recommended that Cabinet:
 - a) notes the report and that further actions through developing an air quality action plan are required in order that Air Quality Objectives are achieved in Musselburgh;
 - b) delegates to the Head of Housing and Environment in consultation with the Council's Corporate Legal Adviser to progress the necessary legal order for the Council to declare an Air Quality Management Area in Musselburgh High Street as delineated in the plan in Appendix 1 to this report.

3. BACKGROUND

Legislation

- 3.1. Part IV of the Environment Act 1995 requires the UK Government and devolved administrations to publish a National Air Quality Strategy. The air quality objectives in Scotland are set out in the Air Quality (Scotland) Regulations 2000, and the Air Quality (Scotland) (Amendment) Regulations 2002. These objectives provide the statutory basis for the system of Local Air Quality Management (LAQM) to protect public health.
- 3.2. The regulations define air quality standards for a number of pollutants: lead; benzene; 1,3 butadiene; carbon monoxide, sulphur dioxide; nitrogen dioxide and small particulate matter (PM10). These pollutants are primarily related to thermal combustion processes including road traffic emissions.
- 3.3. Section 82 of the 1995 Act places an obligation on all local authorities to regularly review and assess air quality in their areas, and to consider the current and likely future air quality in their areas. Under LAQM local authorities also have a duty to continue to work towards meeting the objectives beyond the deadlines set out in the regulations. This review and assessment work is reported to Scottish Government & SEPA annually.
- 3.4. Where exceedences are considered likely, the local authority must then declare an Air Quality Management Area (AQMA) through issuing a formal order, and prepare an Air Quality Action Plan (AQAP) setting out the measures it intends to put in place in pursuit of the objectives.
- 3.5. Currently there are 30 AQMAs in Scotland within 13 local authority areas, and the vast majority of these have been declared for transport related emissions of nitrogen dioxide and/or particles (PM10). The actions outlined in the air quality action plans vary for each authority, depending on the local air quality issues.

Assessment of Air Quality in East Lothian

- 3.6. The Council has been annually reviewing and assessing local air quality since 2003. The majority of pollutants (Benzene, 1,3-Butadiene, Carbon monoxide, Sulphur dioxide and Lead) have been screened out in previous assessments and exceedences of air quality Objectives for these pollutants across East Lothian are not considered likely.
- 3.7. The pollutants of greater concern are Particulate material [(PM10) and Nitrogen dioxide (NO₂), principally from road traffic sources. For both of these pollutants air quality objectives are unlikely to be exceeded across most of East Lothian. PM10 levels are not considered likely to breach Objectives at this time but monitoring continues in Musselburgh.
- 3.8. The main issue relates to Nitrogen Dioxide (NO₂). In June 2012, the Air Quality Detailed Assessment for Musselburgh was completed. It

concluded that the highest annual average NO₂ concentrations, using monitoring data from 2011 and also computer modelling, were predicted at receptors located on High Street and Bridge Street close to bus stops and that the majority of the predicted annual mean exceedences were marginal.

- 3.9. Additional monitoring of NO₂ levels took place in 2012-13 to verify the computer modelling. The results have confirmed that parts of the High Street are just exceeding the Nitrogen Dioxide Annual Mean Objective which is a measure of possible longer term exposure. The 1-hour mean Objective for NO₂ (a measure of short term exposure) is unlikely to be breached.
- 3.10. Monitoring of NO₂ in other parts of Musselburgh (including Bridge Street) and also in Tranent does not indicate any exceedence of air quality objectives at this time. However monitoring of NO₂ levels will continue.

2013 Quality assessment report and next steps

- 3.11 The results of the 2013 Air Quality Progress Report and monitoring data from 2012/13 indicate that the objectives for the majority of pollutants are being, and will continue to be met across East Lothian. However, monitoring of Nitrogen Dioxide in Musselburgh confirms concentrations at various locations in Musselburgh High Street that have been exceeded, or are very close to, the Annual Mean Objective. The results of automatic monitoring of PM₁₀ confirm that both the annual and 24-hour mean objectives continue to be met in Musselburgh town centre.
- 3.12 Accordingly, the Council has to formally declare an Air Quality Management Area (AQMA) in Musselburgh in relation to breaches and likely breaches of the Nitrogen Dioxide annual mean air quality objective. It is recommended that the extent of the AQMA covers the main High Street from the junction with Newbigging to the Junction at Bridge Street as delineated on the map shown in Appendix 1.
- 3.13 An Air Quality Action Plan has to be developed which must focus on effective, feasible, proportionate and quantifiable measures as the top priority in ensuring improvement in local air quality and future compliance with air quality objectives. The Action Plan should include:
 - quantification of the source contributions to allow measures to be effectively targeted
 - evidence that all options have been considered on the grounds of cost effectiveness and feasibility
 - how the local authority will use its powers and work with other organisations in pursuit of air quality objectives
 - clear timescales in which the authority and other organisations propose to implement the measures identified
 - quantification of the expected impacts of the proposed measures and an indication if these measures will be sufficient

- how the local authority proposes to monitor and evaluate the effectiveness of the action plan

3.14 The 1995 Act does not specify any timescales for preparation of an Action Plan but the Scottish Government would normally expect these to be completed within 12-18 months following AQMA declaration. Consultation should take place during the preparation of an Action Plan to ensure consultee's can make known their preliminary views about what the plan should include.

3.15 The types of measures that may feature in an action plan are:

- Liaison with transport operators about vehicle emission levels in Musselburgh
- Reviewing traffic management arrangements in the town centre
- Measures to reduce engine idling
- Air quality monitoring
- In the longer term there may be considerations around roads infrastructure and public transport routes.

3.16 Further work is required to assess the present and future air quality within the proposed AQMA and the reasons for this. The assessment will provide the technical justification for the measures the authority later includes in any action plan. This will involve, amongst other things, a detailed traffic survey to identify the numbers of each vehicle class and their overall contribution to local air quality.

3.17 A further report will be prepared for Cabinet in 2014 detailing a proposed action plan.

4. POLICY IMPLICATIONS

4.1 Assessment of local air quality is a statutory obligation on the Council.

4.2 Air quality is a key performance measure of East Lothian's environmental quality in the East Lothian Environment Strategy 2010-15 and in the East Lothian Single Outcome Agreement 2013

4.3 Declaring an air quality management area may have implications for development proposals in the Musselburgh area particularly any development which may generate significant additional traffic movement or involve thermal combustion processes.

4.4 Meeting air quality standards may have implications for traffic management through Musselburgh town centre.

5. EQUALITIES IMPACT ASSESSMENT

- 5.1 This report is not applicable to the well being of equality groups and an Equality Impact Assessment is not required, however development of an Air Quality Action Plan may require more detailed consideration of equalities related issues.

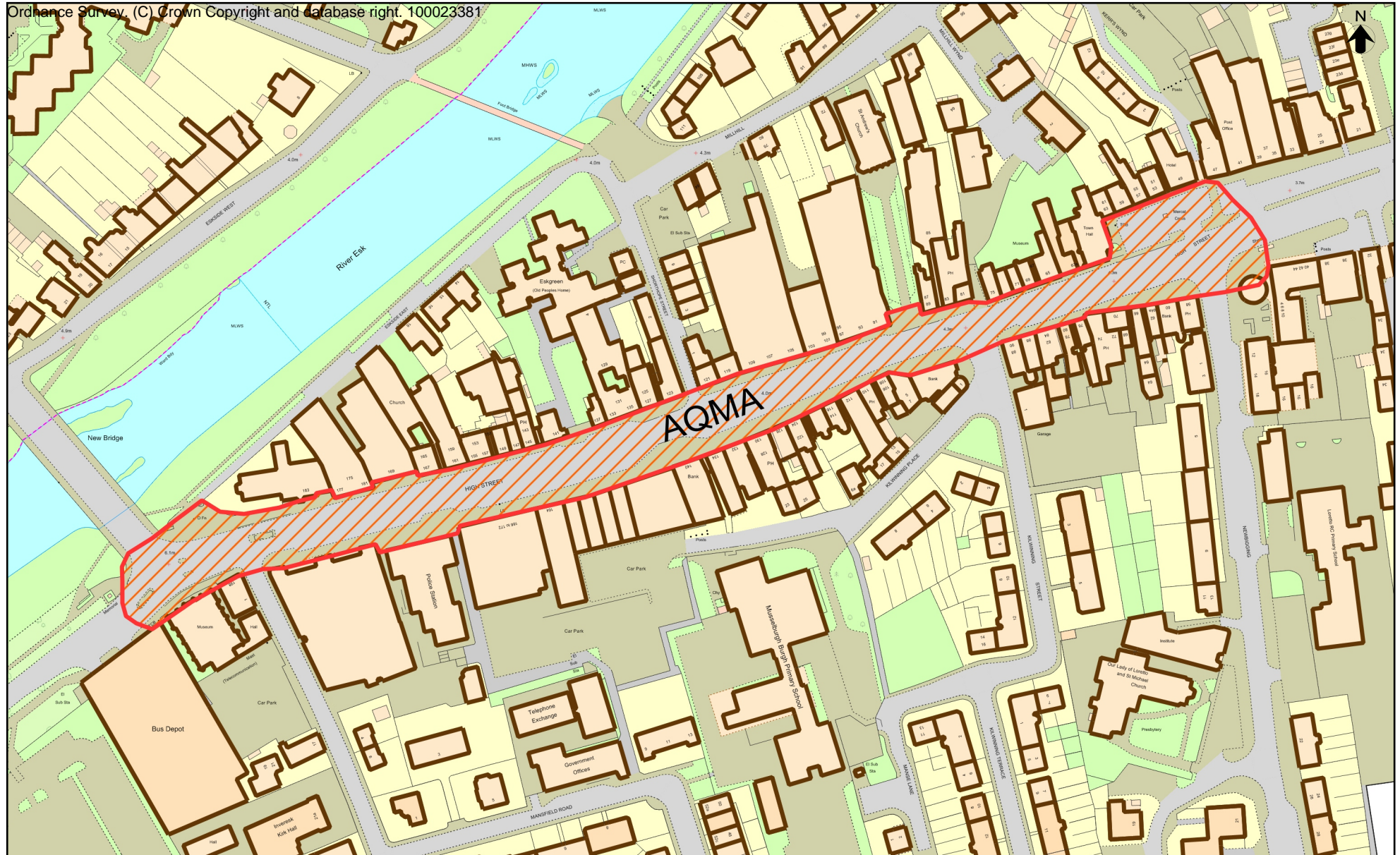
6. RESOURCE IMPLICATIONS

- 6.1 Financial - There are no direct financial implications related to this report, although development and consultation on an Air Quality Action Plan will incur some administrative costs. These costs will be assessed during preparation of the Action Plan and a further report submitted if necessary. Scottish Government grant funding may also be available to assist the Council with initiatives and measures adopted in Air Quality Action Plans. Some grant funding has already been obtained to provide consultancy support for the further assessment work identified in paragraph 3.16.
- 6.2 Personnel - There will be no immediate impacts upon personnel resources as a consequence of this report
- 6.3 Other - None

7. BACKGROUND PAPERS

- 7.1 2011 Air Quality Progress Report for East Lothian Council, June 2011
- 7.2 Air Quality Detailed Assessment for Musselburgh, June 2012
- 7.3 2012 Air Quality Updating and Screening Assessment for East Lothian Council, November 2012
- 7.4 2013 Air Quality Progress Report for East Lothian Council, August 2013

AUTHOR'S NAME	Colin Clark
DESIGNATION	Principal Environmental Protection Officer
CONTACT INFO	John Muir House Haddington EH41 3HA Tel: 01620 827443
DATE	22 nd October 2013



High Street, Musselburgh (Newbigging to The Mall) - Air Quality Management Area

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30 August 2013

User: admin



REPORT TO: Cabinet

MEETING DATE: 12 November 2013

BY: Depute Chief Executive (Partnership and Services for Communities) **8**

SUBJECT: Consultation by the Scottish Government on a Section 36 Application for the Crystal Rig Wind Farm (Phase 3), 10 km South of Dunbar

1 PURPOSE

- 1.1 To advise Cabinet that the Council has been consulted by the Scottish Government Energy Consents Unit (ECU) on an application made under Section 36 of the Electricity Act by Fred Olsen Renewables Limited for an extension to Crystal Rig windfarm (Crystal Rig 3) and to recommend a response to this consultation.

2 RECOMMENDATIONS

- 2.1 It is recommended that:
- (i) The terms of this report be submitted as the Council's formal response to this consultation
 - (ii) The Council **objects** to the application on the grounds:
 - that there are adverse landscape and visual impacts, contrary to East Lothian Local Plan (ELLP) Policy NRG3: Wind Turbines;
 - that the development fails or potentially fails to preserve fauna and flora due to potential impacts on the River Tweed SAC, unless consent is made subject to mitigation as requested by SNH; this is contrary to East Lothian Local Plan Policy NH1a Internationally Protected Areas.
 - (iii) If Scottish Ministers are minded to approve the application then the negotiation of appropriate planning conditions should be delegated to officers.

3 BACKGROUND

Statutory Procedures

- 3.1 Fred Olsen Renewables Limited has made application under Section 36 of the Electricity Act 1989 for an extension to Crystal Rig windfarm. Scottish Ministers are the decision makers for Section 36 applications, but are required to consult the Council for the area in which the site lies, in this case this Council and Scottish Borders Council. If either of these Councils objects and does not subsequently withdraw their objection, a Public Inquiry must be held; if they do not object, Scottish Ministers may at their discretion order a Public Inquiry but they are not obliged to do so. In either case, the ultimate decision on the project rests with Scottish Ministers. Consent under this Act allows Scottish Ministers to direct that planning permission for the project be deemed to be granted, subject to such conditions as they see fit.

The Proposed Development

- 3.2 The application is to develop a wind farm comprising up to 11 turbines and associated infrastructure, at a site currently used for rough grazing in the East Lammermuir Plateau in the Lammermuir Hills, adjacent to and generally north of the existing Crystal Rig windfarm. The wind turbines will be of different heights; 2 turbines with an overall height to blade tip not exceeding 100m, 5 turbines with an overall height of 110m and 4 turbines with a height not exceeding 125m. The rated capacity appears to be between 2-2.5MW per turbine (ES 9A-168).
- 3.3 Other infrastructure includes external transformer housing, site, tracks, foundations, underground electricity cables, borrow pits, anemometry masts, crane pads, temporary construction and storage compounds and associated works/infrastructure. The proposed development will make use of the existing substation and control building. Some of the existing infrastructure is proposed to be used, and some of this is located within Scottish Borders area. Some additional cabling to connect the proposed turbines to the existing substation may also be required in Scottish Borders. The remainder of the development, including all the turbines, are located in East Lothian. The operational period would be 25 years.
- 3.4 Access to the site would follow the same route as used for the existing Crystal Rig, namely leaving the A1 at the Innerwick junction, going via Thurston, following unclassified roads to the existing track alongside the pylon line to Crystal Rig.

Policy Context

- 3.5 The Climate Change (Scotland) Act requires public bodies, when exercising their functions, to act in the way best calculated to contribute to the Act's emissions reduction targets, and to do this in the way it considers most sustainable. Scotland's national targets include an 80% reduction on 1990 levels of emissions by 2050 and an interim target of 42% by 2020. The 2020 Renewable Energy Routemap sets a target of

the equivalent of 100% of Scotland's electricity needs to come from renewable by 2020. Provisional figures for 2012 show almost 40% of electricity needs were met by renewables. Looking at renewable installations which are constructed, consented or in planning, if all the consented applications and around 2/3 of the applications currently in planning were constructed, the target would be met. The Scottish Government are clear that the target should not be seen as a cap.

- 3.6 Scottish Planning Policy (SPP) requires planning authorities to support the development of windfarms in locations where the technology can operate efficiently and environmental and cumulative impacts can be satisfactorily addressed. It also contains policy on protecting various aspects of the built and natural heritage.
- 3.7 SESplan, the strategic part of the development plan, has as an aim "to conserve and enhance the natural and built environment" and to "contribute to the response to climate change through mitigation, and adaptation and promote high quality design/development". Policy 10 states the Strategic Development Plan seeks to promote sustainable energy sources and gives direction to Local Development Plans to set a framework to encourage renewable energy proposals that aim to contribute to achieving national targets for electricity and heat. Policy 1B directs Local Plans to ensure there are no significant adverse impacts on the integrity of the international and national built or cultural heritage sites, as well as to contribute to the response to climate change through mitigation.
- 3.8 The East Lothian Local Plan 2008 (ELLP) applies to this site the site specific policies DC1: *Development in the Countryside and Undeveloped Coast*, which seeks to protect the countryside from inappropriate development, and Policy NH4: *Areas of Great Landscape Value (AGLV)*, which aims to prevent harm to the AGLV. Policy DC1 gives circumstances where new development is acceptable in principle, including infrastructure proposals where they have a clear operational requirement that cannot be met in an urban or allocated area, and any potential detrimental impact is outweighed by its social and economic benefits. The principle of use of windfarm development has previously been accepted under this policy.
- 3.9 ELLP contains specific policy on wind turbines in Policy NRG3: *Wind Turbines*. This states that proposals for windfarms will be supported subject to meeting criteria on landscape character, visual impact, noise, shadow flicker, hydrogeology or hydrology, and there are no unacceptable cumulative impacts. It further states that the recommendations of the Landscape Capacity Study for Wind Turbine Development in East Lothian 2005 (LCS) will be taken into account. The LCS defines Landscape Character Areas across East Lothian. This application is in the East Lammermuir Plateau Character area. The LCS states that there is low capacity for development within this landscape character area. It advises that development on higher ground would not accord with existing wind farm development in slacker areas of landform.

It also advises that scope to accommodate extensions to existing wind farms is severely limited due to impacts on the sense of remoteness and expansiveness of Dunbar Common.

- 3.10 The LCS advised that wind farm development would have to be judged against proposed extensions to Crystal Rig wind farm proposed at that time. As there have been further extensions to the wind farm at Crystal Rig, and new wind farms constructed and approved, it is therefore appropriate to consider CR3 in relation to existing and approved wind farms in the Lammermuirs.
- 3.11 The ELLP also contains topic specific policy NH1a: *Internationally Protected Areas*, protecting Natura 2000 sites, and NH3: *Important Local Biodiversity Sites*, NH2: *Wildlife and Geological Areas* and DP13: *Biodiversity and Development Sites*, protecting local biodiversity and requiring mitigation for impacts.

Representations

- 3.12 Representations are made to Scottish Ministers and it is for them to take these into consideration. Two objections were received by this Council, their grounds being:
- In terms of the Supplementary Landscape Capacity Study, there is no capacity for the proposed turbines
 - Existing slight visual turbine prominence would become dominant
 - Incompatible with Area of Great Landscape Value status of the area
 - Turbine 1 on Fig 1.3 of the Non- Technical Summary is too close to an existing turbine at Aikengall and could therefore affect the electricity generation and reliability of this turbine.
- 3.13 The MOD have objected on grounds of unacceptable interference with radar, though suggest the applicant may be able to overcome this. Marine Scotland request conditions on water quality surveys and monitoring (in respect of their interest in fisheries) and note that details of proposed surveys and monitoring work have not been submitted. SNH object to the proposal due to its potential to affect the River Tweed SAC unless it is made subject to the mitigation set out in the ES through inclusion of site water management in the Construction and Environmental Management Plan, and the appointment of an Ecological Clerk of Works. River Tweed Commission and Association of Salmon Fishery Boards also note no specific fisheries or water ecology assessments have been made and requests appropriate monitoring and mitigation.
- 3.14 SEPA object to the proposal, but would remove the objection with further information and amendments to the application prior to determination and conditions place on any consent. Their concerns are in respect of siting and micro-siting, flood risk, water course crossings, ecology, peat,

sustainable urban drainage (SUDS) and carbon. Transport Scotland request conditions on signage and abnormal loads. Visit Scotland note the importance of scenery to tourism in Scotland.

- 3.15 The RSPB request conditions to protect breeding curlew, avoidance of peat through micro-siting, and drawing up of a Habitat Management Plan. Scotways object to the proposal due to turbine proximity to right of ways including the Herring Road (40m setback) and insufficient regard for impact on amenity and cultural heritage. In particular, they consider there is a significant impact on walkers/riders on footpaths/bridleways from operation of the windfarm. Scottish Water notes that the proposal does not impact on the catchment for the Whiteadder reservoir, but that there is a Scottish Water abstraction source, which is designated as a Drinking Water Protection Area, which must be protected from the risk of contamination and damage.
- 3.16 Scottish Ministers have sought a peat stability assessment from Halcrow, which concludes that the ES does not currently provide a sufficiently robust assessment of the peat landslide risk at the site, although the necessary survey work has been carried out.

Benefits of the project

- 3.17 In terms of employment during construction, which is expected to last around 12 months, contractors would employ around 30-40 workers. There would be some anticipated indirect benefits to local businesses such as B&B's, hire of local plant, temporary employment of local work force and potential hiring of local sub-contractors. Following this, the majority of the operation of the windfarm would be automatic. The turbines at Phase 3 would be included within a wider portfolio of operational wind turbines. For the first few years, there would be roughly 4-6 technicians dedicated to the site, as well as a site manager based in the local area. Other personnel would attend as required.
- 3.18 Windfarms are generally expected to produce carbon savings. The amount of these savings is calculated with reference to a Scottish Government calculator which takes into account the CO₂ gains from not having to generate electricity by other means, minus the CO₂ costs of construction of the windfarm (manufacture of the turbine, construction of the site, de-commissioning, transport, etc as well as its impact on peat). The Environment Statement submits figures for carbon savings of differing percentages of East Lothian's carbon emissions: 4.7% (compared to coal fired generation), 2.2% (compared to grid mix generation) or 3.1% (compared to generation by a mix of fossil fuels) of East Lothian's CO₂ emissions. However, SEPA have submitted a carbon assessment validation which states that there is not sufficient confidence in the carbon payback figure for it to be used by Scottish Ministers as a material consideration in their decision making.
- 3.19 The project is expected to generate somewhere between 40-70,000 MW/year depending on turbine specification (Torness was 9,000,000MWh in 2011).

Landscape and Visual Impact

3.20 The Council's Principal Landscape and Projects Officer does not support the Crystal Rig 3 (CR3) application on landscape and visual amenity grounds, for the following reasons:

- a. the proposed wind farm extension would have a detrimental visual impact on the landscape setting of the Dunbar Conservation Area and part of the Lammermuir skyline when viewed from Dunbar Harbour. It would compete visually with, and detract from, the importance of Dunbar Parish Church as a focal point in key views from Dunbar Harbour;
- b. The proposed turbines of CR3 will be much more visually prominent in views from the north than existing and consented development, and bring the Crystal Rig group of turbines forward towards the Lammermuir edge. This would result in a noticeable increase and intensification of prominent wind farm development along the Lammermuir skyline in views from the north, to the detriment of the existing landscape character. There would be a noticeable increase in cumulative visual impact between the Aikengall/Wester Dod and Crystal Rig groups of wind turbines;
- c. The proposal would result in the spread of wind turbines along the Lammermuir skyline into areas of hillside where there are no turbines at present, with wind turbine development in the gap between two wind farms groups, resulting in the visual coalescence of the Aikengall/Wester Dod and Crystal Rig groups of wind farms in views from the north;
- d. From some viewpoints CR 3 does not appear as an extension to the existing wind farm at Crystal Rig. Rather, it would appear visually unrelated, resulting in visual intrusion of wind farm development into areas of Lammermuir hillside which are largely free of wind turbine development, to the detriment of the existing landscape character of such areas; and
- e. From some viewpoints the proposed turbine layout appears sporadic with at least one proposed turbine visually isolated on the western skyline.

3.21 The applicant's agent has undertaken a Landscape and Visual Impact Assessment (LVIA) of the proposed development which includes wire line visualisations and photomontages from selected viewpoints. The Principal Landscape and Projects Officer makes the following comments on individual viewpoints.

3.22 VP31: Dunbar Harbour. This is a panoramic view across part of the historic Cromwell harbour, part of the Dunbar Conservation Area and skyline to the Lammermuir skyline in the backdrop of this view. Though some existing turbines are visible on the skyline, the majority of existing and consented turbines at Aikengall / Wester Dod are partially screened

by woodland which significantly reduces their prominence along the skyline. The visual impact of turbines forming part of the Crystal Rig group to the west is mitigated by the spires and chimneys of the town

- 3.23 The photomontage of the existing consented turbines shows that the elevated Lammermuir skyline west of the Church is virtually clear of wind turbines and that the tower of Dunbar Parish Church is a visual focal point which is located within the Dunbar Conservation Area.
- 3.24 The proposed CR3 would appear very prominent along the skyline to the west of the Dunbar Parish Church. The rotating turbine blades would compete visually with the church in this view and detract from its importance as a focal point in this view.
- 3.25 The existing wind turbines at Crystal Rig are set back from the Lammermuir edge. The CR3 turbines would be prominent towards the front edge of the Lammermuir skyline. They would spread wind turbine development into an area of prominent skyline which provides an important part of the visual backdrop and landscape setting for the Dunbar Parish Church, which is a local landmark, and the Dunbar Conservation Area. The proposed CR3 turbines would have a detrimental effect on the landscape character of that part of the hillside from this viewpoint and on the landscape setting of Dunbar Parish Church tower and the Dunbar Conservation Area.
- 3.26 VP1 and VP33 John Muir Country Park. The existing and consented wind turbines at Aikengall / Wester Dod comprise a distinct grouping on the Lammermuir skyline. Though some turbine blades at CR1 and 2 are visible to the west, these are much less prominent as these turbines were set back from the Lammermuir edge, thereby reducing their prominence on the skyline. The proposed CR3 turbines would be much more visually prominent on higher areas of the skyline and bring that wind farm forward towards the Lammermuir edge. This would result in a noticeable increase and intensification of prominent wind farm development along this part of the Lammermuir skyline. The proposed development would result in a noticeable increase in cumulative visual impact and visual coalescence of these two groups of wind farms on the Lammermuir skyline.
- 3.27 VP22 Dunbar Library The photomontage of existing and consented wind turbines show two distinct groups of wind turbines, Aikengall to the east and CR1 and 2 to the west separated by elevated hillside. CR3 would result in the spread of wind turbines along the skyline into areas of hillside where there are none at present. This would result in the visual coalescence of these two groups of wind farms, resulting in a continuous line of wind turbine development along this part of the Lammermuir skyline.
- 3.28 At present CR1 and 2 are set back from the Lammermuir edge and are therefore less prominent. The CR3 extension would bring the wind farm forward towards the Lammermuir edge where it would make this wind

farm more prominent and increase the cumulative visual impact of the Aikengall/Wester Dod and Crystal Rig wind farms on the skyline.

- 3.29 VP 17 West Barns to Thistly Cross Layby The existing baseline photograph shows the Lammermuir skyline is currently virtually free of wind turbines. The wire line visualisation shows that a small part of the tips of existing / consented turbines are visible at a distance of 7.2 km. Wirelines for CR3 show that it would be prominent on the skyline and introduce wind turbines into an area of hillside which is largely free of wind farm developments. This would change the landscape character of this part of the hillside affected by the proposed wind turbines. The photomontages illustrate that CR3 does not appear as an extension to an existing wind farm but an intrusion of wind farm development into a landscape and view which is currently largely free of wind turbines.
- 3.30 The before and after photomontages show an isolated outlying wind turbine on the skyline above left of the farm buildings. This appears isolated and unrelated to the proposed CR3 turbines.
- 3.31 The ES mentions the impact of 2 previously proposed wind turbines at South Belton. It should be noted that these turbines are contrary to the guidelines and recommendations in ELC "*Planning Guidance for Lowland Wind Turbines*, June 2013".
- 3.32 VP30 South of Easter Broomhouse. The Cumulative 180⁰ Visualisation shows clearly that CR3 does not read in this view as an extension to CR1 and 2 (which are not visible). Rather, it introduces development into an area where, with the exception of 2 Aikengall blade tips, there is virtually none at present. This impacts on the existing landscape character of this area, consequent on the proposed CR3 spreading wind turbine development north towards the front edge of the Lammermuirs.
- 3.33 VP13 West Mains (by Whitekirk) On the Lammermuir skyline there is space between the Aikengall / Wester Dod and CR1 and 2 (albeit with some tips from existing wind turbines barely visible) which separates these two groups of wind farms. The proposed turbines at CR3 would largely fill this space between wind farm groups and result in a continuous spread of turbines along this part of the Lammermuir skyline.
- 3.34 VP15 Pitcox to Halls Road The Cumulative 360⁰ Visualisation shows the existing and consented baseline view on the Lammermuir skyline comprising Aikengall and Wester Dod turbines as a distinct grouping. The existing CR1 and 2 turbines are hardly visible with the exception of one small blade tip. The CR3 turbines would extend the existing CR1 and 2 wind farm north so that the proposed turbines of CR3 would be prominent on the Lammermuir skyline. This would result in the linking of the more prominent Aikengall / Wester Dod with the currently less prominent CR1 and 2. It would spread wind turbine development into an area of hillside skyline where there is virtually none visible at present. The resultant effect on the skyline would be to extend and intensify development along the skyline in a sporadic fashion with one wind turbine visually isolated on the western skyline, resulting in a detrimental

impact on the existing landscape character of this area of Lammermuir skyline.

- 3.35 VP14 South of Spott The baseline photomontage of existing and consented wind farms shows two distinct and separate groupings with Aikengall/Wester Dod to the east and CR1 and 2 to the west. The elevated skyline which separates these two groups is clear of turbines. CR3 would introduce wind turbines into that area of skyline where there are none at present and result in the visual coalescence of these two wind farm groups. This would change the landscape character and view of this part of the Lammermuir skyline from that of a combination of open hill and wind farms to a skyline which is dominated by wind turbines: this would be detrimental to the existing landscape character.
- 3.36 Further west along this skyline, the tips of existing turbines are barely visible. However, CR3 proposes a turbine which appears conspicuous as the nacelle and blades break the skyline. This appears as an incongruous feature on this skyline.
- 3.37 VP32 Rangely Kip. The majority of the turbines are viewed interwoven with the existing and consented turbines. However, there are 3 proposed turbines which are visually detached from the main CR3 group of turbines. These spread wind farm development further west along the Lammermuir skyline into an area where there are no turbines at present.
- 3.38 VP2 West Steel Wind turbine development would be spread along the skyline. Three indicative turbine heights and dimensions are proposed. From this location, less than 1 kilometre from the nearest turbine, design consistency and compatibility of the proposed 3 turbine heights with other existing turbines is an important issue. However details relating to turbine rotation speeds, turbine design, and start up and shut down thresholds are still to be confirmed.
- 3.39 SNH have concerns over the landscape and visual impacts of this proposal. They note the scheme raises issues of cumulative landscape and visual impacts and the siting and design relationship of the proposed turbines to the existing Crystal Rig and Aikengall developments. They note that the development would bring turbines to more prominent positions towards the northern scarp of the Lammermuir Hills. They comment that this would further remove the overall Crystal Rig development from its original principles of siting and design. This had intended to deliver a large development which was set back from the northern edge and was visually accommodated 'within' the hills and on lower lying ground.
- 3.40 The proposal would intensify the nature of the landscape and visual effects arising from wind development in the area. It infills an area of less intensively developed skyline that currently exists between Crystal Rig and Aikengall, and 'brings forward' the overall Aikengall and Crystal Rig turbine array as it appears over the Lammermuir Hills. This would create a more dominant, linear and visually combined development than is currently experienced. From certain areas within East Lothian, and

particularly within 10km of the site, SNH consider that these new or additional effects will be generally adverse in terms of both landscape character and visual amenity. The addition of more prominent turbines may serve to draw attention to those already there. Some of the proposed turbines sit very prominently on the elevated sections of skyline. SNH give further advice on design and possible mitigation.

Biodiversity Impact

- 3.41 Ecology and ornithology are addressed in Sections 7 and 8 respectively of the ES. SNH note the scheme has the potential to affect the River Tweed Special Area of Conservation through pollution or siltation of tributary watercourses. This could have a significant effect on the qualifying interest of the site (which falls within Scottish Borders Council area) through affecting the water quality. SNH therefore object to the proposal unless it is made subject to mitigation comprising that described in Section 9 of the ES along with approval of a site specific Construction and Environmental Management Plan, and appointment of an Ecological Clerk of Works to secure its implementation. Development which has the potential to harm the SAC, is contrary to ELLP Policy NH1a.
- 3.42 SEPA note that watercourses within the footprint of the development are feeder streams to the Whiteadder water, which is part of the River Tweed SAC. They object to the possible degradation of the watercourse due to sedimentation being released through construction and lack of sediment management. SEPA request a pre- and post-consent invertebrate study to monitor water condition, along with provision for mitigation if there has been degradation. SEPA also object to the application as there is insufficient information provided on Groundwater Dependent Terrestrial Ecosystems, in particular mapping of wetland habitats.
- 3.43 SNH are content that the ES assessment of impacts on national and international designated sites, protected species, habitats and vegetation is adequate, and support the conclusions and mitigation set out in the ES, other than as noted above. They suggest conditions to secure the mitigation.
- 3.44 For protected species, otter and adder are both known to be on the site, as well as possibly red squirrel. Mitigation is offered for these species by the developer.
- 3.45 For habitats and vegetation, the turbines and tracks would cause minor losses of some habitats, namely blanket bog, flushes, marshy grassland and unimproved aced grassland. The most important habitat within the study area is blanket bog (a priority habitat). The ES states that the design of the windfarm ensures that only a small loss of this habitat would occur, so the direct loss of this habitat and its fragmentation is assessed as very low with little or no significant impact. East Lothian Council's Biodiversity Officer notes that access tracks can be very effective drains. One of these (the track to Turbine 10) crosses a section of this habitat and this will have a big impact on this section of bog, to which damage should be avoided where possible. Juniper has been

recorded in 3 locations within the site boundary, remnants of what would have been a greater extent of scrub in the area but land management has resulted in its degradation. Enhancing this habitat would be an alternative to direct compensation for the minor loss of habitats noted above.

- 3.46 For bird interest, the 3 main areas of potential risk from windfarms are direct habitat loss, displacement due to disturbance and death by collision. The ES considered the protected birds and those of conservation concern (red list) as well as those in the UK and Scottish Biodiversity Action Plan, focussing on those known to be susceptible to impacts from windfarms. Though some displacement of some species was expected, no significant residual effect, including cumulatively, is predicted. SNH are content with the assessment in the ES, and mitigation proposed.
- 3.47 East Lothian Council's Biodiversity Officer suggests the re-routing of a track to avoid damage to a section of blanket bog, as well as the agreement of a Habitat Management Plan. If the bog is damaged, suitable mitigation could be agreed. There are two Local Wildlife Sites which the site drains into, namely Mossy Burn and Monynut Water. These could be impacted by silt run-off, and any impact will be as a result of this. Mitigation has been proposed in the ES (silt traps). Tracks cross four of the tributaries of the Mossy Burn, and one track directly crosses it. A track also crosses the Monynut Burn. Risk of silting and direct habitat loss for the tracks harm the Wildlife Site, although ELLP Policy NH3 allows for this where the harm to the natural heritage interest is outweighed by the public benefits of the development, in this case renewable energy production. ELLP Policy NH2 requires mitigation for harm to any designated site, and this includes the River Tweed SAC as well as the Local Wildlife Sites.

Cultural Heritage

- 3.48 The ES gives information on cultural heritage in Section 11. There are no Scheduled Monuments, Listed Buildings, Gardens or Designed Landscapes, Battlefields or Conservation areas within the survey area. Thirty-four cultural heritage constraints were identified within the proposed development area, with one, an area of rig and furrow cultivation, predicted to have a direct impact of moderate significance. Mitigation is proposed for this impact. As regards indirect impacts, 88 Scheduled Monuments, 1 candidate site for scheduling, 20 Category A listed buildings, 7 Inventory status Gardens/Designed Landscapes, 8 Conservation Areas, 2 Battlefields, and 186 Category B Listed Buildings have been identified within 10km from which there are predicted views of the proposed windfarm, and 3 category C listed buildings within 5km of the windfarm with predicted views. The ES does not consider the settings of any of these to be significantly affected by the construction and operation of the proposed development.

- 3.49 The one issue with which there is disagreement over this assessment is in relation to the proposed development's impact on the landscape setting of Dunbar Parish Church tower and the Dunbar Conservation Area. This is previously discussed in paragraphs 3.22 to 3.25 above.
- 3.50 The Council's Heritage Officer in general accepts the findings of the ES, subject to an expansion of the mitigation strategy. If Scottish Ministers are minded to grant the application then this should be secured by condition. In addition, the Heritage Officer accepts that there is a moderate to good potential for unknown archaeological remains to be present, particularly but not exclusively prehistoric and medieval or later. However, the Heritage Officer disagrees that the potential for impacts on these is low. The potential for the survival and location of any remains is unknown therefore the potential to impact upon any remains present must remain as moderate. The Heritage Officer therefore requests a programme of Watching Brief carried out on all groundworks associated with the development. Historic Scotland do not object to the proposal.

Roads and Traffic

- 3.51 The Council's Head of Infrastructure is satisfied with the applicant's proposed means of access, subject to conditions. These conditions are detailed in Appendix One to this report.

Hydrology and Geology

- 3.52 There are 2 private water supplies within the catchments occupied by the windfarm infrastructure, and therefore there is potential for contaminants and disruption to these supplies associated with wind farm construction and operation. The applicant states the impact, following the implementation of a site specific Environmental Management Plan, Drainage Management Plan and Private Water Supply Management Plan, would be minor to negligible.
- 3.53 The site is predominantly underlain by peaty soils of <0.5m, although some deeper areas of peat exist. The ES states that infrastructure has, as far as possible, taken into account other constraints and has been sited outside areas of deeper peat and hydrologically sensitive areas, with buffer areas adopted for natural watercourses. Where access necessitates water crossings, tracks have infringed on these buffers. SEPA notes the siting of turbines, tracks and other infrastructure appears to avoid deep peat where possible.
- 3.54 SEPA notes some issues with the ES assessment of flood risk. They also note that the micro-siting allowance potentially brings some turbines within the 1 in 200 year flood envelope, and therefore object to the application. This objection would be removed if the micro-siting allowance did not allow for turbines within 50m of the watercourse. SEPA also object to the proposal unless new water course crossings are designed to avoid flood risk.

Noise

- 3.55 The ES states that predicted noise levels from the proposal are below the 35dB LA90 simplified noise limit recommended in ETSU-R-97, at all neighbouring residential properties. The predicted increase in noise level (from the addition of the proposed scheme to the existing and consented schemes) in the immediate area show an increase of less than 1dB at all neighbouring residential properties, and therefore states the noise impact from the Phase III can be considered negligible.

Conclusion

- 3.56 Maximising the generation of electricity from renewable sources is a national objective. Planning authorities should support the development of wind farms in locations where the technology can operate efficiently and environmental and cumulative impacts can be satisfactorily addressed. In the case of the proposed CR3, it is considered that its landscape and visual impacts are of such significance as to outweigh any other benefits. Accordingly, the proposed development is contrary to East Lothian Local Plan Policy NRG3, *Wind Turbines*.
- 3.57 The development fails, or potentially fails, to preserve fauna and flora due to potential impacts on River Tweed SAC. This is contrary to East Lothian Local Plan Policy NH1a, *Internationally Protected Areas*.
- 3.58 It is noted that the proposal has the potential to affect military radar, unless a solution can be found agreeable to the MOD. It is also noted that that uncertainty over the location of turbines through micro-siting allowance could impact on flood risk, ecology and peat in the areas identified by SEPA in their response to Scottish Ministers.

4 POLICY IMPLICATIONS

- 4.1 None

5 EQUALITIES IMPACT ASSESSMENT

- 5.1 This report is not applicable to the well being of equalities groups and Equality Impact Assessment is not required.

6 RESOURCE IMPLICATIONS

- 6.1 Financial – none directly; however if the Council objects to the proposal it is likely there will be costs for participation in a Public Inquiry
- 6.2 Personnel - none directly; however staff time is likely to be required for preparing and appearing at a Public Inquiry

6.3 Other - None

7 BACKGROUND PAPERS

- 7.1 Application and Environment Statement for Crystal Rig 3 windfarm submitted to Scottish Ministers
- 7.2 SESplan Strategic Development Plan, June 2013
- 7.3 The East Lothian Local Plan 2008
- 7.4 Landscape Capacity Study for Wind Turbine Development in East Lothian
- 7.5 Scottish Planning Policy
- 7.6 2020 Renewable Energy Routemap
- 7.7 Representations to Scottish Ministers from: Scottish Natural Heritage, Scottish Water, Transport Scotland, Visit Scotland, Scottish Environmental Protection Agency, Historic Scotland, Prestwick Airport, Civil Aviation Authority, Airwave, Association of Salmon Fishery Boards, BT, BT Exploration, Crown Estate, Edinburgh Airport, Halcrow Peat, Horse Society, Marine Scotland, MOD, Mountaineering Council, NATS, RSPB, River Tweed Commission, Scotways, Vodafone, Arqiva.

AUTHOR'S NAME	Jean Squires
DESIGNATION	Planner
CONTACT INFO	01620 827370 jsquires@eastlothian.gov.uk
DATE	28 October 2013

Appendix One

Crystal Rig - Phase 3 – Section 36 application Comments by East Lothian Council's Head of Infrastructure

It is recommended that the following conditions be attached to any planning permission that may be granted:-

- 1) A detailed condition survey of the road shall be undertaken by the developer to cover the full route from/to the A1. Damage to the route during the period of construction shall be repaired by the applicant at no expense to the Council as Roads Authority. The existing public road from the A1 (and in particular from the junction leading to Thurston Mains) is showing signs of deformation particularly when heavy vehicles are running along the carriageway. Therefore as part of the condition survey a full/non destructive assessment of the existing pavement shall be undertaken to include a deflectograph analysis. Detail shall be submitted for approval.
- 2) A detailed and accurate swept path/vehicle track of the above route (i.e. to/from the A1) shall be provided to include the vertical and horizontal alignments of the existing public road. This will identify areas of the existing public road that require remedial works or off road works for the routing of vehicles. It is normally assumed that the "worst case" scenario vehicle would be that for deliveries of turbine blades. For completeness, however, the applicant should undertake vehicle tracking for other delivery vehicles to the site to ensure that the tracking for delivery of other large components, such as turbines or steelwork for towers etc, do not create additional issues.
- 3) As a result of the above swept path/vehicle track assessment all works to be carried out on the public road and/or off road works shall be detailed and submitted for approval by the planning authority in consultation with the roads authority. Details shall include accurate layout plans with longitudinal sections and construction specification. It shall also be noted that the design of structures, if required, will require appropriate approval in accordance with ELC Standards for Development Roads. The applicant shall note that a Road Construction Consent will be required for any off road improvements that will result in the permanent realignment of the existing public road. Off road widening works carried out as part of planning applications 01/00963/FUL and 01/00964/FUL were undertaken for previous phases of the Crystal Rig site. These have in, several cases, been soiled over and landscaped and are now unavailable without the potential for new planning approvals. This also requires localised alterations at the "S" bend at Birky Bog Plantation.
- 4) The site access shall be detailed and supported by a swept path assessment of the junction. The first 15 metres, in length, of the access shall be constructed to ELC Standards for Development Roads. In addition all vehicles must be able to access/egress the site in a forward gear.

- 5) A detailed Construction Method Statement shall be undertaken by the applicant to include the following:-
 - a. Detail of all delivery vehicles and loads to and from the site including number of trips.
 - b. Detail of all site traffic (i.e. employees) including construction traffic and delivery of equipment for onsite works (i.e. cranes, excavators etc.).
 - c. Method for providing off road and on road improvements for routing of large loads to site.
 - d. Timescales and construction period for works and management of extraordinary loads including traffic management on the public road and preventing access to non-site traffic for off road improvements.
 - e. Number and type of vehicle movements for day-to-day operation of the windfarm following completion of on site works.
 - f. Routing of all delivery/construction traffic site to and from the site.
 - g. Decommissioning of site and potential for unforeseen events such as replacements of turbines/blades etc.

- 6) Wheel washing facilities must be provided and maintained in working order during the period of operation of the site. All vehicles must use the wheel washing facilities to prevent deleterious materials being carried onto the public road on vehicle tyres.

Any works within or affecting the public road including works on verges must be authorised in advance by this Council as roads authority. Further, any proposals that include new or extended roads will also require a road construction consent prior to carrying out any works and for which application should be made to The Head of Infrastructure.

Finally it is confirmed that the applicant has provided a section within the "Written Statement" (Section 12) on Traffic and Transport. This is adequate at this time but the above information/conditions are still required for the proposal if it is approved.

**Head of Infrastructure
Partnerships and Services for Communities
East Lothian Council**

28 October 2013

REPORT TO: Cabinet

MEETING DATE: 12 November 2013

BY: Depute Chief Executive (Partnership and Services for Communities)

SUBJECT: Application for Offshore Wind Farm at Inch Cape including Export Cable Corridor with Landfall at Cockenzie or Seton Sands

1 PURPOSE

- 1.1 To advise Cabinet that the Council has been consulted by the Scottish Government, through their agency Marine Scotland, on an application made under Section 36 of the Electricity Act by Inch Cape Offshore Limited (ICOL) to construct and operate an offshore windfarm and to recommend a response to this consultation.

2 RECOMMENDATIONS

- 2.1 It is recommended that the Council does not object to the part of the project which is subject to this Section 36 application but raises with Marine Scotland the issue of the scope of the related Environment Statement.

3 BACKGROUND

Procedure

- 3.1 Consent is being sought under Section 36 of the Electricity Acts for an offshore wind farm (described below) as well as Marine Licences for the wind turbines and other works up to the Mean High Water Springs. Marine Scotland, acting for Scottish Ministers, will determine both the Marine Licences and the Section 36 application. East Lothian Council is a consultee on the application and its views will be given to Marine Scotland. Other representations from consultees and the public are made direct to Marine Scotland, and it is for them to take these into consideration. It is also Marine Scotland that is the authority responsible for monitoring compliance with the terms of any approval and related conditions. As the Section 36 application does not cover the inter-tidal

works, any objection from this Council would not automatically trigger a public inquiry, though Marine Scotland may decide to hold one at their discretion. A further application for planning permission is expected to be made to East Lothian Council for the intertidal and onshore works.

- 3.2 In considering an application for a Marine Licence, Scottish Ministers must take into account the need to protect the environment and human health, prevent interference with legitimate uses of the sea and such other matters as they consider relevant. In considering an application under the Electricity Act 1989, regard must be had to the desirability of preserving natural beauty, of conserving flora, fauna, and geological or physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic or archaeological interest, and the extent to which the developer has done what they can to mitigate the adverse effect of these.
- 3.3 The application is subject to the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 and the Marine Works (Environmental Impact Assessment Regulations 2007 and is accompanied by an Environment Statement (ES).

Description of Proposal

- 3.4 The development is located offshore, 30 kms east of the mouth of the Firth of Tay and some 50 kms from the nearest part of the East Lothian coast at Seacliff.
- 3.5 The parts of the development that are the subject of this application comprise:
- Up to 213 three-bladed wind turbines with a maximum blade tip height of 215m, in a sea area of approximately 150km², coloured and lit as agreed with appropriate navigation and aviation authorities.
 - 5 substation platforms to collect electricity for export
 - Up to 3 meteorological masts
 - Connecting/export cables with landfall in East Lothian, at either **Cockenzie** or **Seton Sands**
 - 2 jointing pits (100m² each) (chambers within which cables are joined)

The lifespan of the project has not been fixed but is expected to be at least 25 years. The design of the development has not yet been finalised but would be within the 'design envelope' described. This approach is generally accepted as valid to allow for the Environmental Impact Assessment and consenting process to be carried out while technical and design work are still ongoing. It should show the 'worst case'. The proposal has been offered a grid connection at the existing **Cockenzie** transmission station. The connection will allow the export of up to

1050MW. The Environment Statement (ES) states the project is expected to generate around 3000GW hours of electricity per annum, which is approximately 9% of current (2010) Scottish annual electricity consumption.

3.6 The export cable corridor is 1.4km wide at its widest point, reducing to about 250m in shallower water near East Lothian. Up to 6 export cables will be installed in separate trenches within the Offshore Export Cable Corridor, with each trench being about 1metre wide. Cable separation is generally 4x the water depth with a minimum separation of 50m. There are various techniques which may be used for laying and burial of the cable. Horizontal directional drilling through the intertidal area is one option, which involves drilling a hole from the landward side of the landfall to a point below low tide where the marine equipment can operate. The cable is then fed through this. The other possible methods involve disturbance of the ground. The installation of the intertidal cable is expected to take 6 months, with the export cable installation offshore expected to take 9 months. The route will cross the Firth of Forth SPA/SSSI.

3.7 In addition, but not included in this application, the development will also include onshore transmission works namely:

- Cables from the offshore export cable to a substation
- A substation of two possible sizes, either 195m wide by 105m long and 25m high, or 210m wide by 210m long, by 20m high
- Cables from the substation to the grid connection at Cockenzie

No site has yet been identified for the substation, consequently the route for the onshore section of the cables is not identified either. The substation will clearly be a very substantial structure. The onshore works are briefly described in Section 7.15 of the ES as an underground route for the export cable for which a trench will be dug, requiring a corridor of 40m, and a substation. No location is given for the substation or, consequently, the onshore cable route.

Context and Policy

3.8 The Scottish Government has strong support for renewable energy which is seen as key in meeting climate change targets. They published '*Blue Seas Green Energy – A Sectoral Plan for Offshore Wind Energy*' covering Scottish Territorial Waters following assessment to determine the best sites for offshore wind energy. This plan identifies Inch Cape as a short term option. The Crown Estate had previously invited developers to submit proposals, and this was one of four submitted in the east region, of which Neart Na Gaoithe is the only other now being taken forward. Further offshore, Firth of Forth windfarm is being taken forward as part of the 'Round 3' process.

3.9 National Planning Framework 2 includes support for all renewable technologies including the encouragement of offshore wind, recognising

the Crown Estates identification of the Firth of Forth as a location with potential. The Major Issues Report for National Planning Framework 3 states an ambition for Scotland to be a world leader in offshore renewable energy. It also recognises the Scottish Territorial Waters sites, though they are subject to marine planning. It notes that NPF3 should identify and support the onshore infrastructure required to realise the opportunities for offshore renewable. It proposes to identify the key onshore infrastructure requirements arising as National Developments, specifically including onshore electricity connections, substations and converter stations. The area shown in the NPF3 MIR for this is a crescent shape with tips around the Arbroath area and broadly from Aberlady to Cockburnspath.

- 3.10 Scottish Planning Policy is in the process of being revised. Both the current and revised policies encourage all forms of renewable energy. SESPlan Policy 10 states that the plan seeks to promote sustainable energy sources.
- 3.11 The East Lothian Local Plan 2008 covers the inter-tidal area (where the options for the export cable corridor are proposed) but is not applicable beyond the low water mark.
- 3.12 For the Cockenzie option, the intertidal area other than the harbour is covered by ELLP Policies NH1a and NH1b which protect the interests of the Special Protection Area and Site of Special Scientific Interest, and Policy C3, which protects the recreational, amenity and landscape interest of an area. The harbour area is covered by Policies ENV2, ENV4, ENV5 and ENV14. Policy ENV2 aims to protect uses appropriate to a town centre, Policies ENV4 and ENV5 control development within Conservation Areas and ENV14 supports the environmental improvement and regeneration of the West Harbour area.
- 3.13 The Seton Sands export corridor option is covered by Policies NH1a, NH1b as above, Policy DC1, which aims to protect the character of the countryside, and partly by Policy NH4 which aims to prevent harm to the Area of Great Landscape Value.

Visual impact of the windfarm

- 3.14 The potential effects of the windfarm itself are, at 50km (31 miles) or more from East Lothian, limited by distance and atmospheric conditions (which means that the number of days on which the proposal is visible are predicted to be limited). It will nonetheless be visible from parts of the area, some of the time. There are also limits imposed by the curvature of the earth; the ES states that at sea level the wind turbines will begin to disappear over the horizon. At raised locations, such as North Berwick Law, this effect is lessened.
- 3.15 The Zone of Theoretical Visibility Diagram (ZTV) (ES Fig 16.5d) shows that there is potential visibility to the base of the turbine in some higher north easterly facing locations: North Berwick Law, the ridge behind Whitekirk, Penraig Hill, the Garletons and the Lammermuir foothills and

edge. There is potential visibility to hub height from much of the coast from Gullane round to the boundary with Scottish Borders Council area, as well as further inland south of Dunbar.

- 3.16 One viewpoint in East Lothian has been supplied - Number 25 at Dunbar Esplanade on the John Muir Way, to the north of Winterfield Pavilion - which is 50.33 km from the windfarm. This visualisation shows the turbines as visible to the hub, with a pattern that is discernibly a grid layout to the western end, but less noticeably so at the other end due to the angle at which the layout is viewed across the proposal. The height of the Inch Cape turbines will appear similar to the height of the Isle of May, although they are well over twice the distance away. The ES states that lighting is unlikely to be visible at this distance.
- 3.17 The ES states the magnitude of change from this viewpoint is 'negligible' or, in the case of the impact on the seascape, minor. This is not agreed as there will be a permanent, moving man-made structure in an area that does not have this at present. The magnitude of change should therefore be judged as 'moderate' as a partial loss or alteration of a key feature or characteristic of the seascape. The open, undeveloped nature of the view to sea will be altered. The seascape is considered moderately sensitive, which would give a moderate significance. It is likely that this is repeated around the coastal areas at a similar distance to Dunbar, with significance increasing with the sensitivity of the view.
- 3.18 Discussions were had with representatives of all the Firth of Forth offshore windfarm developers on viewpoints for cumulative issues, although specific viewpoints were not agreed with this Council for this scheme in particular. A viewpoint from North Berwick Law, a well used viewpoint close to the 50km study area and substantially higher than the Dunbar one chosen, could have been usefully included (as suggested by officers through consultation on cumulative issues), as could Tantallon Castle, a property in the care of Historic Scotland and Scheduled Monument.
- 3.19 The cumulative visualisations in the ES for Neart na Gaoithe (NnG) show that the cumulative view of the proposal from North Berwick Law would have the effect of the Inch Cape turbines appearing behind and on both sides of the May Island. This would be in addition to those at NnG, which appear between the May Island and the Bass Rock, although the Inch Cape turbines will appear smaller due to distance. From Tantallon, the NnG ES shows the Inch Cape turbines removing the separation between NnG and the May Island, and so removing the open sea setting of this island from this point. As the Inch Cape proposal has not submitted visual information for these viewpoints it is not clear what the effect would be; however, given the information shown in the NnG ES, it cannot be assumed there would be no effect.
- 3.20 The proposal is likely to be visible in context with the Forth Islands from other coastal locations, though from lower lying land the turbines will be less visible due to the curvature of the earth.

- 3.21 Cabinet has previously considered (January 15, 2013) the report for 'Neart na Gaoithe' and agreed that no objection should be raised on this windfarm, though representation was made about some aspects of the ES. That proposal consisted of 75-125 turbines with a maximum tip height of 197m and, at 28km from North Berwick, was closer to East Lothian than the current proposal. Marine Scotland has yet to decide on that proposal.

Ornithology

- 3.22 For ornithology, there is some potential for direct habitat loss on the birds of the Firth of Forth SPA, as well as impacts from disturbance and indirect impacts on bird communities due to impacts on benthic (sea bottom dwellers such as lobsters and clams) and natural fish species both there and in the Forth Islands SPA. Minor residual impacts were reported on gannet, puffin, razorbill, guillemot, and kittiwake, rising to minor/moderate for common and arctic tern, and for cumulative impact on puffin, razorbill, guillemot; to 'moderate' for cumulative impact on common and arctic tern, and to 'major' cumulatively for kittiwake. SNH have not yet commented on this application, but will address the interests of these areas.

Fisheries

The main commercial fisheries near the windfarm area are scallop dredging, squid trawling and creeling for crab and lobster. Within the export cable corridor there are important crab and lobster fishers inshore, in addition to prawn and squid trawling and scallop dredging. During construction and operation fishing activity is expected to be excluded from certain areas, or access restricted. As a result significant impacts on scallop fisheries could occur. There are potential safety risks if fishing vessels interact with cables and potential navigational conflict with Inch Cape structures.

Commercial vessels

- 3.23 For commercial vessels, the busiest route passing the windfarm is from Firth of Forth to northern Scotland, used by an average of 2.5 vessels per day. All commercial vessels travelling between ports in the Firth of Forth to European ports intersect the export cable corridor. There will inevitably be some disruption to specific vessel transits due to the proposal. However, taking account of mitigation measures to maintain navigational safety, the proposal is considered in the ES to be within acceptable limits.

Recreation

- 3.24 For marine recreation, the coast areas in East Lothian are heavily used for a number of different activities. During the installation of the export cables, recreational sailors and other users of inshore waters will experience localised disruption. Cable laying works at the chosen landfall location will temporarily preclude recreation and access to the

affected part of the coast/beach. SNH have yet to comment on the application but it may be that impacts on birds if the work were to be carried out in winter means that the work will have to be done in the summer, when it is most likely to affect recreational users. None of the leisure beaches are predicted to experience meaningful change in sediment due to the export cable construction.

Planning assessment

- 3.25 National and local policy is strongly in favour of the development of renewable energy where any environmental constraints can be satisfactorily addressed. The impacts of the windfarm itself on visual amenity and seascape, including cumulatively, as detailed above, are likely to be less in East Lothian than the impacts of the Neart na Gaoithe scheme to which this Council did not object. There are some impacts on the birds which are an interest of the Firth of Forth and Forth Islands SPA. An impact on the objectives of the designation and overall integrity of the sites would be contrary to ELLP Policy NH1a. SNH have yet to comment, and the Council does not contain the expertise to judge this. Thirdly, there is likely to be some short term disruption of recreation and local landscape in the intertidal area during construction, and possibly also at decommissioning, as well as some short term disruption of offshore recreation.
- 3.26 It is considered that the impacts of this Section 36 application on interests in East Lothian, as described in this ES (which it is emphasised do not cover the whole project), are outweighed by the contribution of this development to renewable energy generation, subject to the views of SNH on impacts on the bird species of the SPA.

Environmental Impact Assessment (EIA) Issues

- 3.27 The onshore works, while not included as part of these proposals, are nonetheless considered an integral part of the project. It is possible that if consent is given for this windfarm and export route then this will constrain options for the location of onshore export cables within East Lothian and the very substantial substation that will be required. At this stage it is uncertain that a suitable site could be identified for the substation which would not have significant environmental or other effects.
- 3.28 EIA legislation states that consent should not be given for a project until an assessment of the likely significant environmental impacts of the project has been carried out. It is the view of Council officers, expressed previously to the applicant, that the ES should cover the whole project, including the onshore works. However, it is for Marine Scotland as the decision maker to determine whether or not the ES is adequate.

4 POLICY IMPLICATIONS

4.1 None

5 EQUALITIES IMPACT ASSESSMENT

5.1 This report is not applicable to the well being of equalities groups and an Equality Impact Assessment is not required.

6 RESOURCE IMPLICATIONS

6.1 Financial – none

6.2 Personnel - none

6.3 Other – none

7 BACKGROUND PAPERS

7.1 Inch Cape Environment Statement

7.2 Blue Seas Green Energy – A Sectoral Marine Plan for Offshore Wind Energy in Scottish Territorial Waters

7.3 Draft National Planning Framework 3

7.4 Scottish Planning Policy

7.5 SESplan

7.6 The East Lothian Local Plan 2008

7.7 SNH ‘Visual Assessment of Windfarms – Best Practice’

7.8 Neart Na Gaoithe Environment Statement

AUTHOR'S NAME	Jean Squires
DESIGNATION	Planner
CONTACT INFO	01620 827370
DATE	28 October 2013



**MINUTES OF THE MEETING OF THE
LICENSING SUB-COMMITTEE OF THE CABINET**

**THURSDAY 12 SEPTEMBER 2013
COUNCIL CHAMBER, TOWN HOUSE, HADDINGTON**

10

Committee Members Present:

Councillor J McNeil (Chair)
Councillor J McMillan
Councillor D Grant
Councillor J Williamson

Council Officials Present:

Ms C Molloy, Legal Adviser
Ms D Richardson, Licensing Administration Officer

Others Present

PC H Bowsher, Police Scotland
PC J Leslie, Police Scotland

Clerk:

Mrs F Stewart, Committees Assistant

Apologies:

Councillor J Caldwell

Declarations of Interest:

None

SUMMARY OF PROCEEDINGS – EXEMPT INFORMATION

The Licensing Sub-Committee unanimously agreed to exclude the public from the following business containing exempt information by virtue of Paragraph 6 (information concerning the financial or business affairs of any particular person other than the Authority) of Schedule 7A to the Local Government (Scotland) Act 1973.

1. Applications for Grant of Taxi/Private Hire Car Driver's Licence

The Sub-Committee considered one application for grant of a licence which was granted.



**MINUTES OF THE MEETING OF THE
LICENSING SUB-COMMITTEE OF THE CABINET**

**THURSDAY 10 OCTOBER 2013
COUNCIL CHAMBER, TOWN HOUSE, HADDINGTON**

Committee Members Present:

Councillor J McNeil (Chair)
Councillor J Caldwell
Councillor D Grant
Councillor J Williamson
Councillor F McAllister

Council Officials Present:

Mr I Forrest, Legal Adviser
Ms M Winter, Licensing Administration Assistant

Others Present

PC H Bowsher, Police Scotland
Insp A Harborow, Police Scotland

Clerk:

Mrs F Stewart, Committees Assistant

Apologies:

Councillor J McMillan

Declarations of Interest:

None

1. LICENSING OF SECOND HAND DEALERS AND WINDOW CLEANERS

The Depute Chief Executive, Resources and People Services, had submitted a report to advise the Sub-Committee of the proposed terms of the resolutions being proposed for public consultation regarding the licensing of window cleaners and second hand dealers.

The Chair advised that the Council had received a letter from Police Scotland dated 30 May 2013 requesting that the Council make resolutions to license these activities.

The Legal Adviser presented the report and explained that, at present, both these activities were deemed to be optional in terms of the Civic Government (Scotland) Act and only require a licence if a Local Authority makes a resolution to that effect. He advised that the Sub-Committee had agreed to the request made by Police Scotland at their meeting on 13 June 2013 and authorised the Licensing division to produce initial drafts of the proposed resolutions. This process had now been completed and the proposed resolutions were attached to the report. The Legal Adviser stated that, should the Sub-Committee decide to approve the wording of the resolutions, they would be advertised in the local press, giving members of the public 28 days within which to submit representations. The new licensing regime would not come into effect for a period of nine months after the date of the adoption of the resolution.

The Police Inspector stated that this proposal had been driven by local Police Officers and advised that Midlothian, West Lothian and City of Edinburgh Councils had already introduced licensing for second hand dealers and window cleaners. He also reported that there had been two examples recently where such licensing controls had led directly to arrests for housebreaking.

Members discussed the merits of the proposals and sought further information from the Police Inspector.

Following the discussion, the Chair concluded that Members were in favour of the resolutions proceeding to public consultation and considered that the new licensing regime, if adopted, would assist the Police in making East Lothian a safer place.

Decision

The Sub-Committee agreed:

- i. to approve the terms of the draft resolutions attached to the report and to authorise the Corporate Legal Advisor and such staff as she may appoint, to proceed with the process of advertising the drafts in the local press; and
- ii. to accept a further report following the public consultation period and make a final determination on the proposals in the light of any public representations received.

SUMMARY OF PROCEEDINGS – EXEMPT INFORMATION

The Licensing Sub-Committee unanimously agreed to exclude the public from the following business containing exempt information by virtue of Paragraph 6 (information concerning the financial or business affairs of any particular person other than the Authority) of Schedule 7A to the Local Government (Scotland) Act 1973.

1. Applications for Grant of Taxi/Private Hire Car Driver's Licence

The Sub-Committee had received one application for grant of a licence. The applicant did not attend the Hearing and the application was continued.

2. Applications for Renewal of Taxi/Private Hire Car Driver's Licence

The Sub-Committee considered two applications for renewal of a licence and both were agreed.

