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From: [REDACTED]

Sent: Mon, 25 Jan 2021 09:40:13

To:

Subject: LDP2 representations - on behalf of RES

Sensitivity: Normal

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[REDACTED]

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Dear Sir/Madam

Please find attached for your consideration representations to LDP2 submitted on behalf of Renewable Energy Systems (RES). I look forward to receiving a confirmation receipt in due course and I would be delighted to discuss any query you may have regarding the representations.

Kind regards
Simon

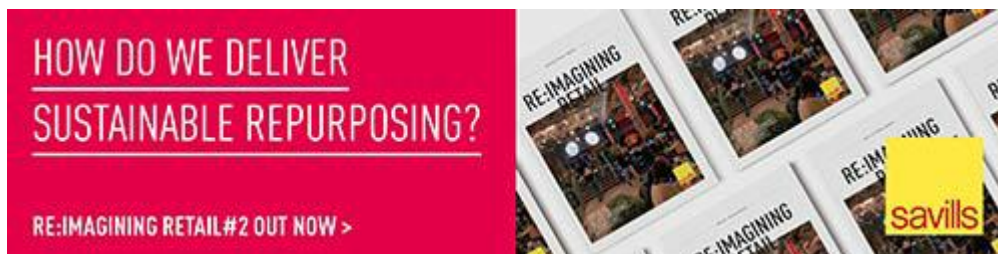
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25 January 2021



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Dear Sir/Madam

Local Development Plan 2 - Representations on behalf of Renewable Energy Systems

This representation to the Local Development Plan 2 (LDP2) consultation is submitted on behalf of Renewable Energy Systems (RES). RES is the world's largest independent renewable energy company with operations across Europe, the Americas and Asia-Pacific and have been at the forefront of renewable energy development for over 38 years. RES is responsible for more than 18GW of renewable energy capacity and energy storage projects worldwide.

RES has a pipeline of development projects across the Scottish Borders and therefore has an interest in the emergence of planning policy through LDP2. RES has a number of suggested changes to LDP2 that it would like to see implemented prior to adoption of the Plan, mainly to bring certain policies into line with current national planning policy set out in Scottish Planning Policy (SPP), to ensure consistency between policies and to ensure LDP2 contains appropriately worded planning policies that support the transition to a green economy, support the post Covid economic recovery and address the climate emergency.

Our responses to various parts of LDP2 are clearly set out under sub-headings that correspond to the specific policy or part of LDP2 in question. The initial comments relate to observations on the recently published National Planning Framework 4 (NPF4) Position Statement and the implications this is likely to have for Development Planning.

National Planning Framework 4 – Position Statement

Consultation on LDP2 is running in parallel with consultation on the Scottish Government's NPF4 Position Statement. A key theme running through the NPF4 Position Statement is the need for the planning system to play a central role in delivering net-zero greenhouse gas emissions by 2045. The Position Statement notes on page 2 that there is a need '*to rebalance the planning system so that climate change is a guiding principle for all plans and decisions*'. Delivering net zero greenhouse gas emissions has been identified as one of the four key Outcomes for NPF4 and page 8 notes that '*Climate Change will be the overarching priority for our spatial strategy*'.

It is recognised that the NPF4 Position Statement is not in itself a document setting out policy, rather it sets out current thinking on key topics to inform a draft NPF4 later in 2021. As such, it is not a material consideration of any weight however, it is a useful signpost of where the new NPF4 is likely to focus attention recognising that a new national policy response is required in light of the climate emergency and the net zero target, amongst other important issues

With this emerging national policy context in mind, it is therefore disappointing to note that LDP2 makes no specific reference to the Scottish Government's declared 'climate emergency' which was also declared by the Scottish Borders Council on 25 September 2020, nor any mention of the 2045 net-zero greenhouse gas emissions reduction target. These issues are addressed further in the following commentary.

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LDP2 Comments

Section 4 – Vision, Aims and Spatial Strategy

The LDP2 Vision is set out in paragraph 4.1, which is considered by the Council to be up to date and relevant to the Scottish Borders. Given that the Vision looks forward to 2038, a notable omission is any specific reference to the climate emergency or the 2045 net-zero target. Given that the NPF4 Position Statement states that a central role for the planning system is to deliver net-zero greenhouse gas emissions by 2045, it is considered that the LDP2 Vision needs to be amended to include specific reference to these overarching priorities, that must guide all future land use planning decisions and allocations.

It is acknowledged that LDP2 makes reference to climate change and a low carbon future in places, e.g. paragraphs 2.18 and 4.7; however, for the above reasons there should be specific reference to this in the LDP2 Vision linked clearly to the climate emergency.

Changes are also required to the main aims of LDP2, summarised in the bullet points following paragraph 4.8. Within the 'Growing Economy' heading it is considered that a further bullet point should be added which makes specific reference to the 'green recovery' in the post Covid economy. Specific reference is made to the green recovery in the Scottish Government's Programme for Government 2020 and LDP2 should be updated to make specific reference to this opportunity.

Secondly, under the 'Sustainability' heading a further bullet point should be added which makes it clear that LDP2 will continue to support new renewable energy developments. There is commentary on this issue in paragraph 4.7, but having this identified as a specific aim of LDP2 would carry greater significance and weight in development management terms. It would also align LDP2 more closely with the Programme for Government 2020 and reflect one of the Key Opportunities set out in the NPF4 Position Statement.

Section 5 – Growing Our Economy

RES is concerned to note that this section of LDP2 makes no reference to the green economy, green recovery or the economic development opportunities associated with the renewable energy sector and its associated supply chain. The Onshore Wind Policy Statement (OWPS) (2017) notes that '*onshore wind is a vital component of the huge industrial opportunity that renewables more generally create for Scotland*'. It also notes that '*The industrial opportunity, and the extent to which we can continue to capture these benefits, remains a top priority for Scottish Ministers*'. While there is reference to the low carbon economy in Section 8 of LDP2, a specific reference to and acknowledgement of the economic opportunities associated with the renewable energy sector in Section 5 would create appropriate linkages between various Sections of LDP2 and create a supportive context for specific LDP2 policies.

Section 8 – Delivering Sustainability and Climate Change Agenda

RES welcomes the acknowledgement in paragraph 8.1 that national planning policy supports renewable energy to facilitate the transition to a low carbon economy. However, in general, it is considered that LDP2 does not give the climate emergency or achievement of net zero by 2045 enough emphasis. These issues should be front and central of LDP2, given that the LDP2 Vision looks forward to 2038.

RES considers LDP2 should be updated to specifically acknowledge the 2045 net zero and associated interim targets and that this Section of LDP2 should be strengthened to reaffirm the Council's commitment to helping achieve these targets. For example, the Council should amend paragraph 8.1 to make it clear that the need to mitigate the causes of climate change 'must' be taken into account in all land use decisions, rather than 'should' be taken into account, as currently expressed in paragraph 8.1. This would reflect the nationally and locally acknowledged 'climate emergency' and ensure that LDP2 recognises firstly the seriousness of the climate emergency and secondly the important role that planning has to play in delivering the changes needed to address this pressing issue.

Section 8, paragraph 8.8, of LDP2 cross references the Council's Renewable Energy Supplementary Guidance (SG) from 2018, noting that it confirms the Council's continuing support for all renewable energy types within appropriate locations. This level of clear in principle support for appropriately sited renewable energy development should be reflected in LDP2 itself, in the main renewable energy Policy ED9, further commentary on which is set out below.

Section 9 – Local Development Plan Policies and Policy Maps

Policy PMP1 'Sustainability'

RES welcomes the acknowledgement in paragraph 1.1 of this Section that LDP2 has a key role to play in encouraging the use of renewable energy sources. However, it is of concern to note that Policy PMP1 itself does not make any reference to the promotion of renewable energy and low carbon technologies. Criterion (e) encourages the efficient use of energy and resources, particularly non-renewable sources, but this does not go far enough.

As Policy PMD1 is an overarching policy of relevance to all planning applications it is imperative that a further criterion is added to the policy which explicitly encourages developers to promote low carbon and renewable energy technologies as part of their development proposals. This is an essential addition to this Policy to reinforce the message that addressing the climate emergency and achieving net zero by 2045 must be key outcomes for LDP2.

Policy PMD2 'Quality Standards'

This policy states that it applies to all new development and the follow on commentary states that the Renewable Energy SG may be relevant to this policy. RES questions whether this policy is relevant to renewable energy developments, such as onshore wind farms. The issues that this policy deals with such as design, placemaking, accessibility and green space are all matters more relevant to other forms of development such as residential, commercial and mixed use proposals. Given that there is a stand-alone policy specifically relevant to renewable energy proposals (Policy ED9), RES considers that it would be appropriate for LDP2 to make it clear that this policy does not apply to renewable energy developments.

A point by point assessment of a typical onshore wind farm development against the criteria of Policy PMD2 would appear to be unnecessary given that the vast majority of these criteria simply would not be relevant to such an application. The requirement for such proposals to '*integrate with its landscape surroundings*' is likely to prove problematic for onshore wind farm developments and applying these policy tests could potentially give rise to unintended policy conflicts and inconsistency with the main renewable energy policy.

RES therefore considers that this policy should be updated to make it clear that it does not apply to renewable energy developments, in the same way that LDP2 usefully states that Policy ED10 is not relevant to wind energy applications.

Notwithstanding the above, RES considers that criterion (a) should be amended to clarify what is meant by '*the current carbon dioxide emissions reduction target has been met*'. Is this intended to be a reference to targets set out in the Supplementary Planning Guidance mentioned in the Policy, some building standard requirements or some other targets?

Policy PMD4 'Development Adjoining Development Boundaries'

RES notes that the Renewable Energy SG is identified as a document that may be of relevance to this policy. RES is unclear why this may be, given that the policy refers to development boundaries and town and village expansion. The policy itself does not make any reference to renewable energy uses and to avoid any confusion reference to the Renewable Energy SG should be removed and perhaps a further statement provided within the Policy itself that it does not apply to renewable energy proposals; these being assessed primarily against Policy ED9 (see later comments on the scope of that policy).

Policy ED9 'Renewable Energy Development'

This is the principal LDP2 policy against which renewable energy developments will be considered. RES has a number of comments to make upon the detailed wording and scope of the policy as well as observations on the preamble text, as follows.

Paragraph 1.1 – RES welcomes the acknowledgment in this paragraph that the need to mitigate the causes of climate change is an important issue, but for the reasons previously noted it is considered that LDP2 should be amended such that the impacts of and adaptation to climate change 'must' be taken into account in all decisions within the planning process, rather than 'should' be taken into account as LDP2 currently states.

Paragraph 1.2 – RES considers that the final two sentences of this paragraph should be deleted. The penultimate sentence singles out onshore wind farm proposals as developments that are considered to be '*particularly challenging*', in seeking to balance impacts of a development with renewable energy generation. This statement immediately and unfairly puts this type of development 'on warning' and notifies renewable energy developers that they may face difficulties in the planning process. It is a well-established planning principle that each application must be treated on its own merits and subject to some rewording Policy ED9 could provide a sound basis to consider applications, allowing impacts to be balanced with benefits. The final sentence of this paragraph should also be deleted – the consideration of alternatives is a matter for the Environmental Impact Assessment process. This sentence also sets renewable energy developments apart from other forms of development in policy terms, requiring an additional level of locational justification that is not grounded in national planning policy.

Paragraph 1.4 – this paragraph should be amended to remove any reference to the now outdated 2020 renewable energy targets. The paragraph should be updated to make specific reference to the 2045 net zero greenhouse gas reduction target, and associated interim targets. It is also important that LDP2 acknowledges the recently published update to the Climate Change Plan 2018-2032 'Securing a Green Recovery on a Path to Net Zero'. This Update notes that by 2032 there will be '*a substantial increase in renewable energy generation, particularly through new offshore and onshore wind capacity*' (underlining added).

Paragraphs 1.5 and 1.11 – RES disagrees with the comment in these paragraphs that Policy ED9, which has been taken forward from the existing LDP, '*remains robust*' and that it provides a sound basis for determining a range of renewable energy applications. For the reasons set out in the following detailed commentary, amendments to Policy ED9 are considered necessary to ensure it is fit for purpose for the duration of the LDP2 lifetime.

In terms of Policy ED9 itself, RES welcomes the clear statement that the Council '*will support*' further renewable energy proposals, including commercial scale wind farms, and that these '*will be approved*', where these can be accommodated without unacceptable significant adverse effects. The list of assessment criteria for onshore wind energy proposals reflects paragraph 169 of SPP but RES would query the reference to the November 2018 Landscape and Cumulative Impact Study. The reference to this Study on page 77 notes the date as 2016. This is a minor point but RES would be grateful if this discrepancy could be clarified as part of the final LDP2.

RES notes that Policy ED9 makes no specific reference to either the repowering or extension of existing wind farm sites. It is unclear therefore whether the Council intends this policy to apply equally to these proposals as well as new onshore wind proposals. There is reference to repowering in the Renewable Energy SG, but RES considers that the Council should take the opportunity to update the parent LDP2 policy to provide clarity on this issue, and set a clear and unambiguous policy framework for such applications.

RES considers that there is a strong case for a stand-alone policy dealing solely with repowering. The reason for this is that the OWPS states in paragraph 35 that the Scottish Government's position '*remains one of clear support in principle for repowering at existing sites*'. To reflect this clear national policy position, RES requests

that LDP2 is amended to include a stand-alone policy dealing solely with repowering that clearly sets out in principle support for such applications.

At the same time, Policy ED9 should be amended to make it clear that the policy applies also to extensions to existing wind farm sites, as required by SPP paragraph 161.

RES notes that Policy ED9 makes no specific reference to energy storage. There is reference to energy storage within the assessment criteria for wind energy proposals, where these technologies may be co-located. However, increasingly energy storage proposals are being taken forward as stand-alone developments and it is important that this is recognised in LDP2. Policy ED9 should therefore also be widened in scope to provide a supportive policy framework for assessing stand-alone energy storage schemes.

RES considers that the penultimate paragraph under the 'Consideration of Other Renewable Energy Developments' should be amended. The reference to technologies '*that require a countryside location*' is likely to apply to most forms of commercial scale renewable development, including large scale solar and onshore wind as well as the other fuels listed, e.g. bio fuels and biomass. The policy should make it clear that the additional tests do not apply to those other technologies already covered by the earlier parts of Policy ED9. A potential modification would be to amend the start of the policy to read:-

'Proposals for renewable energy developments involving bio fuels, short rotation coppice, biomass or small scale hydro-power will be assessed.....'

This amendment would remove any potential complication associated with other technologies already covered by the main body of text in Policy ED9, that also require a countryside location.

Policy ED10 'Protection of Prime Quality Agricultural Land and Carbon Rich Soils'

RES welcomes the clarifying statement in paragraph 1.1 and Policy ED10 itself that this policy does not apply to renewable energy developments, which would be assessed against the requirements of Policy ED9. This useful statement could be applied elsewhere in LDP2 to remove any uncertainties about which policies, in addition to Policy ED9, would be relevant to the consideration of a renewable energy proposal.

Policy ED12 'Mineral and Coal Extraction'

The final sentence of this policy states that there will be a presumption against peat extraction and other development likely to have an adverse effect on peatland and/or carbon rich soils within Class 1 and 2 peatland areas. As far as onshore wind farm developments are concerned, this aspect of Policy ED12 is inconsistent with Table 1 of SPP, and is also inconsistent with the principal renewable energy policy, ED9.

Within Table 1 of SPP, carbon rich soils and priority peatland are Group 2 interests, and '*areas of significant protection*'. The key SPP test in assessing wind farm applications in Group 2 areas is to consider whether '*any significant effects on the qualities of these areas can be substantially overcome by siting, design or other mitigation*' (underlining added). Policy ED12 is inconsistent with this approach, as far as onshore wind farms are concerned, as it introduces a blanket presumption against any form of development (which would therefore include onshore wind farms) where there is likely to be an adverse effect on the receptor and irrespective of how minor that impact may be. This approach does not take account of the potential significance of any impacts and does not cater for circumstances where developers may be able to substantially overcome significant effects. There could be a scenario therefore where a wind farm development is consistent with both SPP and LDP2 Policy ED9, but not Policy ED12. Policy ED12 should therefore be amended to make it clear that it does not apply to wind energy applications which require to be assessed against Policy ED9, in much the same way that Policy ED10 confirms it is not relevant to renewable energy applications.

Policy EP1 'International Nature Conservation Sites and Protected Species'

RES considers that the second part of this Policy dealing with European Protected Species (EPS) is unnecessarily restrictive. The Policy should be amended to recognise that even where an EPS is detected on site, it may be possible for a development to proceed with mitigation in place, including through adherence to a possible licence from NatureScot. It is appropriate that LDP2 sought seek to protect EPS from significant impacts associated with a development proposal but, as currently worded, the Policy puts a series of restrictions in place, where there is even the prospect of an EPS being present, without first having this presence confirmed through site surveys. It therefore goes beyond the precautionary principle. Even where an EPS is present on site, this does not necessarily mean that it will be adversely affected by a proposal. Potential effects can potentially be avoided by siting, design or other mitigation or through the implementation of best practice construction techniques or other mitigation. There is also the possibility that a licence from NatureScot could be obtained to undertake work that may affect an EPS.

To distinguish between EPS and international nature conservation sites, RES considers that a stand-alone policy dealing solely with EPS would be beneficial. A reworded stand-alone policy could read as follows:-

'Where a development proposal is likely to have a significant adverse effect upon a European Protected Species, permission will not be granted unless in consultation with NatureScot it can be confirmed that the development proposal will not be detrimental to the maintenance of the favourable conservation status of the species and that there is no satisfactory alternative to the development proposal. In considering such development proposals, the Council will consider whether the development proposal is likely to require a licence from NatureScot.'

Policy EP2 'National Nature Conservation Sites and Protected Species'

RES considers that part (a) of Policy EP2 requires amending to bring it in line with SPP. Part (a) is an exception criteria, which may permit development in some circumstances where it has been established that the development in question is likely to have an adverse effect upon the nature conservation interest in question. The purpose of part (a) is to consider whether these impacts would be so significant as to warrant refusal of permission and it should therefore be amended to refer to *'the objectives of the designation'* and the *'overall integrity'* of the site, consistent with SPP paragraph 212.

Policy EP4 'National Scenic Areas'

RES considers that Policy EP4 should be amended by removing *'and its surrounds'* from Parts (a) and (b) of the policy. This form of wording is inconsistent with the protection given to National Scenic Areas in paragraph 212 of SPP, which refers to the importance of considering impacts upon the *'objectives of the designation and the overall integrity of the area'*. This protection does not extend to *'its surrounds'*, which is an undefined geographical area. In addition, paragraph 196 of SPP advises that Development Plans should not establish buffer zones around areas designated for their natural heritage importance. As worded, Policy EP4 does just that and any reference to *'its surrounds'* should be deleted from a final version of the Policy.

Policy EP6 'Countryside Around Towns'

RES notes that this Policy does not specifically identify renewable energy development as potentially acceptable uses in the defined Countryside Around Towns. RES considers that renewable energy uses are potentially acceptable uses in these areas and Policy EP6 should either be amended to include renewable energy uses in Part (a) or the Policy should be amended to explain that it does not apply to renewable energy proposals, which will be assessed primarily against Policy ED9.

Policy EP7 'Listed Buildings'

Policy EP7 states that *'New development that adversely affects the setting of a Listed Building will not be permitted'*. As worded, this part of the Policy means that any development that gives rise to any adverse impact

upon the setting of a Listed Building, no matter how minor, will be refused permission. This wording is considered to be inconsistent with Section 59 of the Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997, which states that when considering whether to grant planning permission for a development that affects a Listed Building or its setting, the decision maker is to '*have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses*'. This is reflected in paragraph 141 of SPP.

There may be a scenario where, on balance, works to or affecting the setting of a listed building may have a negative effect upon the special character or setting of the Listed Building, but these works are deemed acceptable e.g. to ensure the retention of the building itself or save it from demolition or to repair following damage. The planning balance may conclude that while having 'special regard' to the characteristics of the Listed Building, it is acceptable to allow the development to proceed. This could not happen under Policy EP7 as currently worded and RES requests that this part of the Policy is amended to bring it in line with the legislation.

Policy EP8 'Historic Environment Assets and Scheduled Monuments'


RES considers that Policy EP8(a) requires amendment to bring it in line with SPP, paragraph 145. Firstly, Policy EP8(a) is considered to be inconsistent with this paragraph of SPP because it does not make any reference to 'the integrity' of the setting of a Scheduled Monument. The Policy as currently worded simply states that unless in specific circumstances, development proposals that, inter alia, adversely affect the setting of a Scheduled Monument will not be permitted.

'Setting' and 'integrity of setting' are two separate matters and it is important that Policy EP8(a) is amended to recognise this and reflect SPP. It is possible that a development may have an adverse effect upon the setting of a Scheduled Monument, but this impact would not affect the 'integrity of its setting'. In such a scenario, there would be no conflict with SPP, but there would be a conflict with Policy EP8(a). The Policy therefore needs to be changed to bring it into line with SPP on Scheduled Monuments.

The final sentence of Policy EP8 is considered unnecessary and should be deleted. The requirement for a mitigation strategy in each and every case where an historic environment asset or its appropriate setting is affected is both unnecessary and not feasible. There will be cases, including potential renewable energy projects, where ultimately a proposal may affect the setting of an historic environment asset, even after mitigation (even if this is a minor or negligible impact). Such impacts may not be capable of further mitigation and it would not therefore be possible for developers to comply with this Policy requirement. In such cases, it is for the Development Management process to weigh up the overall significance of such effects to arrive at a conclusion about the acceptability of these impacts in the wider planning balance. This final part of the Policy also only refers to 'setting' and not 'integrity of setting' so there is also an inconsistency point when dealing with Scheduled Monuments.

I trust the above comments will be given careful consideration in preparing final amendments to LDP2. The alterations requested by RES are important and necessary changes required to bring LDP2 into line with SPP and to ensure LDP2 puts the climate emergency at the centre of policy development and to ensure future planning policy within the Scottish Borders contributes to achievement of the net zero target by 2045.

Yours sincerely



Simon Herriot
Planning Director

cc. RES