

Perth and Kinross Council  
Development Management Committee – 17 December 2013  
Report of Handling by Development Quality Manager

Formation of a 500kw run-of-river hydro electric generating scheme, powerhouse building, accesses and associated works at Rumbling Bridge

Ref. No: 13/01233/FLL  
Ward No: 8– Kinross-shire

**Summary**

This report recommends approval of the application for the installation of a run of river hydro scheme and powerhouse as the development is considered to comply with the relevant provisions of the Development Plan.

**BACKGROUND AND DESCRIPTION**

- 1 Full planning consent is sought for the installation of a run of river hydro scheme on the River Devon at Rumbling Bridge in Kinross-shire. The proposal is a run of river scheme with a single intake point on the River Devon which will have a capacity of up to 500kw.
- 2 The development includes the construction of a single intake, a high pressure buried pipeline, an outfall to take water back to the burn, a powerhouse and a series of temporary construction access tracks.
- 3 The Rumbling Bridge Scheme is a run of river scheme which will operate without storage according to the flow of the river. Abstracting a proportion of the flow at the intake point, passing it via the new pipeline to a conventional water turbine located within a powerhouse allows this to happen. The hydro scheme will be connected to the grid via a nearby electricity supply.
- 4 It is proposed to bury the pipeline route throughout its length and the proposal includes natural land re-instatement so that very soon after installation, the pipeline will become virtually invisible. Previous examples of approved hydro schemes in Perth and Kinross show that this is the case and can be effectively achieved.
- 5 The powerhouse is proposed at the side of a large field adjacent to the river bank and a woodland strip which runs along the river side. It sits at a much lower level than the surrounding residential development. A construction compound and laydown area is proposed adjacent to the A977 public road with a further temporary laydown area proposed to the north approximately half way along the proposed pipeline route.

- 6 The plans have been revised following discussions with the developer to alter the design of the powerhouse, provide clarification on tree felling and to confirm that the pipeline route will be buried along its entire length. The amended plans resulted in the application being re-advertised and neighbours being re-notified. There was also a further consultation period. The site is located within an Area of Great Landscape Value (AGLV).

## **ENVIRONMENTAL IMPACT ASSESSMENT (EIA)**

- 7 EEC Directive (No 2003/35/EC) requires the Competent Authority (and in this case Perth and Kinross Council) giving a planning consent for particular project to make the decision in the knowledge of any likely significant effects on the environment. The Directive therefore sets out a procedure that must be followed for certain types of project before they can be given 'development consent'.
- 8 This procedure, known as Environmental Impact Assessment (EIA), is a means of drawing together, in a systematic way, an assessment of a project's likely significant environmental effects. This helps to ensure that the importance of the predicted effects, and the scope for reducing any adverse effects, are properly understood by the public and the relevant Competent Authority before it makes its decision.
- 9 A screening exercise in accordance with the EIA (Scotland) Regulations 2011 (as amended) was undertaken by the Planning Authority and in this case an Environmental Statement was not required.

## **NATIONAL POLICY AND GUIDANCE**

- 10 The Scottish Government expresses its planning policies through the National Planning Framework 1& 2, the Scottish Planning Policy (SPP) and Planning Advice Notes (PAN).

### **Scottish Planning Policy 2010**

- 11 This SPP is a statement of Scottish Government policy on land use planning and contains:
- the Scottish Government's view of the purpose of planning,
  - the core principles for the operation of the system and the objectives for key parts of the system,
  - statutory guidance on sustainable development and planning under Section 3E of the Planning etc. (Scotland) Act 2006,
  - concise subject planning policies, including the implications for development planning and development management, and
  - the Scottish Government's expectations of the intended outcomes of the planning system.

**The most relevant paragraphs of the above are as follows:**

- Paragraphs 45 - 51 Economic Development
- Paragraphs 92 - 97 Rural Development
- Paragraphs 110 - 124 Historic Environment
- Paragraph 123 Archaeology
- Paragraphs 125 - 148 Landscape & Natural Heritage
- Paragraphs 134 - 136 International Designations (SPA's & SAC's)
- Paragraphs 142 - 145 Protected Species
- Paragraphs 146 - 148 Trees & Woodland
- Paragraphs 165 - 181 Transport
- Paragraphs 182 - 195 Renewable Energy
- Paragraphs 196 - 211 Flooding and Drainage

12 The following Scottish Government Planning Advice Notes (PAN) are also of interest:

- PAN 1/2011 Planning and Noise
- PAN 2/2011 Planning and Archaeology
- PAN 40 Development Management
- PAN 45 Renewable Energy
- PAN 51 Planning, Environmental Protection and Regulation
- PAN 60 Planning for Natural Heritage
- PAN 61 Planning and Sustainable Urban Drainage Systems
- PAN 69 Planning & Building Standards Advice on Flooding
- PAN 79 Water and Drainage

## **DEVELOPMENT PLAN**

13 The Development Plan for the area consist of the Approved Tayplan 2012 and the Adopted Kinross Area Local Plan 2004

### **Tayplan: Strategic Development Plan 2012-2032**

14 The vision set out in the TAYplan states that:

*“By 2032 the TAYplan region will be sustainable, more attractive, competitive and vibrant without creating an unacceptable burden on our planet. The quality of life will make it a place of first choice, where more people choose to live, work and visit and where businesses choose to invest and create jobs.”*

Under the Tayplan the principal relevant policy is:-

### **Policy 3: Managing Tayplan's Assests**

15 Understanding and respecting the regional distinctiveness and scenic value of the TAYplan area through: ensuring development likely to have a significant effect on a designated or proposed Natura 2000 sites (either alone or in combination with other sites or projects), will be subject to an appropriate

assessment. Appropriate mitigation requires to be identified where necessary to ensure there will be no adverse effect on the integrity of Natura 2000 sites in accordance with Scottish Planning Policy; and safeguarding habitats, sensitive green spaces, forestry, wetlands, floodplains (in-line with the water framework directive), carbon sinks, species and wildlife corridors, geodiversity, landscapes, parks, townscapes, archaeology, historic buildings and monuments and allow development where it does not adversely impact upon or preferably enhances these assets;

#### **Kinross Area Local Plan 2004**

Under the Local Plan the site lies within the landward area of the plan and within an Area of Great Landscape Value.

16 The most relevant policies are as follows:-

#### **Policy 1 Sustainable Development**

17 Identifies guidelines by which all development should be considered in relation to sound principles of sustainable development.

#### **Policy 2 Development Criteria**

18 Provides criteria by which all developments will be judged. In particular, that the development should have a landscape framework, should have regard to the scale, form, colour and density of development within the locality and should not result in a significant loss of amenity to the local community.

#### **Policy 4 Flood Risk**

19 Development in areas liable to flood or where remedial measures would adversely affect flood risk elsewhere will not normally be permitted.

#### **Policy 5 Landscape**

20 Advised that the landscape character should be enhanced. The site is immediately adjacent to, but outwith the boundary of the Area of Great Landscape Value protected by Policy 54 that developments should enhance the landscape.

#### **Policy 17 Renewable Energy**

21 The Council will support, in appropriate locations, renewable energy developments subject to criteria.

#### **Policy 20 Protected Species and Habitats**

22 Development which would affect certain species will only be permitted where appropriate assessments have demonstrated that there will be no adverse impact on the species or habitat.

### **Policy 26 Trees**

- 23 Seeks to protect woodland as much as possible and development proposals will require suitable planting schemes.

### **Policy 38 Public Access and Informal Recreation**

- 24 The Council will seek to improve public access to the countryside.

### **Policy 54 Area of Great Landscape Value**

- 25 New development will only be permitted where it is considered to enhance the natural and man made assets in the area. Proposals should also include details of landscape enhancement measures.

## **PERTH AND KINROSS PROPOSED LOCAL DEVELOPMENT PLAN 2012**

- 26 On 30 January 2012 the Proposed Plan was published. The Council's current adopted Local Plans will eventually be replaced by the Local Development Plan. The Council's Development Plan Scheme sets out the timescale and stages leading to adoption. The Proposed Local Development Plan has undergone an Examination following which a report was published on 11 October 2013 containing the Reporter's recommendations. The Council has a three month period to consider the Reporter's recommendations and the modified Plan will be published by 11 January 2014. This will be the Plan that the Council intends to adopt, subject to agreement by Scottish Ministers. Prior to adoption, the Proposed Local Development Plan 2012 is a material consideration in the determination of this application, reflecting a more up to date view of the Council than those contained in the relevant adopted Local Plan.

The most relevant policies of the above are as follows:-

### **Policy PM1: Placemaking**

- 27 Design and siting of development should reflect the character and amenity of place.

### **Policy NE1: Environment and Conservation Policies**

- 28 National, local and European protected species should be considered in development proposals.

### **Policy NE1A: International Nature Conservation Sites:-**

- 29 Development which could have a significant effect on a site designated or proposed under the Habitats or Birds Directive (Special Areas of Conservation and Special Protection Areas) or a Ramsar Site will only be permitted after an Appropriate Assessment indicates certain criteria.

### **Policy NE2: Forestry, Woodlands and Trees**

- 30 The Council will seek to protect all wildlife and wildlife habitats, including grasslands, wetlands and peat-lands and habitats that support rare or endangered species.

### **Policy NE3: Bio Diversity**

- 31 The Council will seek to protect and enhance wildlife and wildlife habitats.

### **Policy HE3: Conservation Areas**

- 32 There is a presumption in favour of development in conservations areas that preserves or enhances its character or appearance.

### **Policy TA1: Transport Standards and Accessibility Requirements**

- 33 The Plan identifies that encouragement will be given to the retention and improvement of existing infrastructure.

### **Policy HE1: Scheduled Monuments and Non-Designated Archaeology**

- 34 There is a presumption against development which would have an adverse effect on the integrity of a Scheduled Monument and its setting and the Council will seek to protect areas or sites of archaeological interest and their settings.

### **Policy ER1: Renewable and Low Carbon Energy Generation**

- 35 Proposals will be supported where they are well related to the resources that are needed for their operation and in assessing such proposals, a series of criteria will be taken in to account.

### **Policy ER6: Managing Future Landscape Change to Conserve and Enhance the Diversity and Quality of the Area's Landscapes**

- 36 Development and land use change should be compatible with the distinctive characteristics and features of Perth and Kinross's landscapes.

### **Policy EP2: New Development and Flooding**

- 37 There will be a general presumption against proposals for built development or land raising on a functional flood plain and in areas where there is a significant probability of flooding from any source or where the proposal would increase the probability of flooding elsewhere.

## **Policy EP8: Noise Pollution**

- 38 There is a presumption against the siting of development proposals which will generate high noise level of noise in the locality of existing or proposed noise sensitive land uses.

## **OTHER POLICIES**

### **Tayside Landscape Character Assessment (TLCA)**

- 39 The Tayside Landscape Character Assessment (TLCA) is published by Scottish Natural Heritage. The Structure Plan, the Kinross Area Local Plan and the Highland Area Local Plan 2000 make it clear that the TLCA will be a 'material consideration' when considering any proposal in Perth & Kinross. The TLCA suggests that the overall aim of any management strategy should reflect the sensitivities of the landscape.

### **Scottish Natural Heritage's Guidance on Hydroelectric Schemes and the Natural Heirtage Version 1 – December 2010**

- 40 Provides guidance on the natural heritage impacts associated with hydro developments. It focuses on design issues and ways to mitigate environmental effects.

## **SITE HISTORY**

- 41 No specific relevant planning history

## **CONSULTATIONS**

<b>Perth and Kinross Heritage Trust</b>	No objection subject to condition
<b>Environmental Health</b>	Initial objection due to noise, addressed through submission of further noise assessment and subject to conditions
<b>Local Flood Prevention Authority</b>	No objection subject to conditions
<b>Scottish Natural Heritage</b>	No objection
<b>Scottish Environment Protection Agency</b>	No objection after submission of flood risk assessment

## REPRESENTATIONS

42 A total of 12 letters of representation have been received all of which object to the proposal and have raised the following relevant issues:-

- Visual impact/design/impact on Area of Great Landscape Value (AGLV)
- Loss of Trees
- Noise/residential amenity
- Impact on recreational value of falls
- Impact on protected species/flora and fauna
- Traffic impact/access
- Impact on protected species
- Lack of clarity in plans
- Ownership of land/excavation required
- Impact on river flow
- Grid connection

These issues are all raised in the Appraisal section of this report other than the ownership of land which is not a material planning consideration

## ADDITIONAL STATEMENTS

43

Environment Statement	Not required
Screening Opinion	Yes (EIA not required)
Environmental Impact Assessment	Not required
Appropriate Assessment	Not required
Design Statement / Design and Access Statement	None
Report on Impact or Potential Impact	None submitted.

## APPRAISAL

### Policy

44 Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 require that planning decisions be made in accordance with the development plan unless material considerations indicate otherwise. The determining issues in this case are whether: - the proposal complies with development plan policy; or if there are any other material considerations which justify a departure from policy. The most relevant policies of the Kinross Area Local Plan (KALP) in this instance are outlined in the policy section above. The Council's Proposed Local Development Plan 2012 is also a relevant material consideration in this instance.



- 45 Policy 6 of TAYplan relates to the aim of delivering a low/zero carbon future for the city region to contribute to meeting Scottish Government energy targets and indicates that, in determining proposals for energy development, consideration should be given to the effect on off-site properties, the sensitivity of landscapes and cumulative impacts.

### **Landscape and Visual Impact**

- 46 The application site is located within an Area of Landscape Value (AGLV) and a Landscape and Visual Impact Assessment (LVIA) has been submitted in support of the proposal.

### **Powerhouse**

- 47 The powerhouse is proposed on the southern bank of the River Devon to the west of the Rumbling Bridge Gorge. It is proposed to be set against a back drop of the existing woodland strip along the river bank. During deliberations on the application the design of the powerhouse was considered and further detail on the proposed finishing materials were submitted with a further package of information in early October. This confirmed that the finishing materials are proposed to be a natural slate roof a vertical larch cladding on the walls stained dark sage. In my view these materials are common place in rural locations and will help the building relate successfully to its immediate surroundings. The layout has also been altered to move the proposed transformer kiosk to the south west of the powerhouse to ensure it is hidden from the main public views to the north east. Furthermore the hardstanding area to the north east of the building is to be formed using grasscrete or similar which will again help to minimise the visual impact. A group of trees are also proposed to the east and north of the powerhouse to provide screening and help the powerhouse blend with the existing tree cover on the river bank. Full details of this will be requested by condition to ensure suitable sizes and species of both trees and shrubs are used. I note that these trees will take some time to mature but they will be of some benefit. In any case I am satisfied that the design of the powerhouse is acceptable for this location.
- 48 Whilst I appreciate that this scheme is introducing an industrial powerhouse into a rural location I believe the scheme has been well designed, following the amendments, to ensure it can integrate with the existing character.
- 49 I am satisfied that this element of the proposal complies with Policy 96 of the KALP and Policy HE3A of the PLDP.

### **Construction Compounds**

- 50 The proposed construction compounds and pipe laydown areas will be highly visible from the A922 public road and will therefore have a detrimental impact on the visual amenity of the area. These, however, are proposed for a temporary period only during construction operations and I am satisfied that given the impact is only temporary that these elements can be supported.

## **Intake**

- 51 The intake is located directly adjacent to an existing footpath which travels alongside the River Devon. It is therefore likely to be visible from public areas. The intake will be a large concrete structure built into the bank of the river. Three large trees are proposed for felling on the south side of the river to accommodate the intake and a rock reinforcement wall is proposed on each bank to provide support for the structure. The intake is proposed within an existing rock outcrop area of the river. It is inevitable that the intake structure will have some impact on visual amenity but I believe the location chosen is appropriate. The existing tree cover along the bank provides the structure with some containment and the rock outcrop also ensures the additional concrete elements are kept to a minimum. Having discussed the intake structure on site it was agreed that the most appropriate method to limit the impact on visual amenity was not to attempt to disguise or screen the intake but to make information available to the public regarding its use and purpose. In that respect an information board and bench are also proposed to explain the scheme to walkers using the footpath. Whilst it is noted that this is a relatively large scale structure I am satisfied that the location is appropriate and the works overall will not be of significant detriment to the visual amenity of the area.

## **Pipeline**

- 52 Letters of representation have raised concerns regarding the initially proposed section of pipeline which was to be placed above ground directly adjacent to residential properties at Rumbling Bridge. Having met the applicant and agent on site they have confirmed that this section of the pipeline can be partially buried into the hillside and then covered over with soil. This will help to reduce its visual impact and I am satisfied that this solution is suitable to ensure compliance with the relevant policies of the Development Plan. I recommend that details of this solution are sought by a suitably worded planning condition.

## **Access Tracks**

- 53 The proposal includes a temporary access track utilising an existing field access to serve the proposed intake point at the eastern (upstream) end of the scheme. A further temporary access track is proposed within the middle section of the scheme where the compounds are proposed. Whilst these will have some visual impact they are for a temporary period only and therefore their impact is considered to be significant.
- 54 A further access track is proposed to serve the powerhouse site which will traverse the existing sloping field down to the powerhouse at the riverside. This access track is to be 4m wide but will be unsurfaced but permanent. I recommend a condition seeking full details of this access track.

### **SEPA/Car License**

- 55 The applicant is required to submit a CAR application for the proposed development under the Water Environment (Controlled Activities) Regulations 2005 (as amended). SEPA have been formally consulted on this application and have offered no objections. They have advised that the proposal is capable of being granted a CAR License subject to conditions which would protect the water environment.
- 56 SEPA has also provided recommendations within their consultation response regarding the other regulatory requirements which they are involved in. I intend to attach an informative note making the applicant aware of these regulatory requirements.

### **Private Water Supply**

- 57 Consultation with Environmental Health confirms that there are no properties in the vicinity of the development which are served by private water supplies.

### **Flooding and Drainage**

- 58 Policy 4 of the Kinross Area Local Plan relates to flood risk. Development which has a significant probability of being affected by flooding or would increase the probability of flooding elsewhere should usually not be permitted. However, there are exceptions, for example where infrastructure is essential for operational reasons and where it cannot be located elsewhere. In such cases, the development should be designed to remain operational in times of flood and not impede water flow, and the effect on the flood water storage capacity should be kept to a minimum.
- 59 SEPA have raised concerns regarding the potential flood risk associated with the development and initially raised an objection in this regard. Following discussions with the applicant a Flood Risk Assessment (FRA) has been prepared and submitted to SEPA for comment.
- 60 SEPA have now withdrawn their objection on flood risk grounds following submission of this information. Furthermore the Council's Flood Prevention Officer has raised no objection to the proposal.

### **Access/Construction Traffic**

- 61 Initially there will be plant deliveries and then deliveries of pipes and ready mix concrete trucks on a periodic basis and the one off delivery of the turbine and generator during the construction period. In addition there will also be regular daily site personnel and delivery van movements during construction. As a consequence of this there will therefore be a temporary increase in traffic associated with construction. I appreciate construction operations will have an impact on the nearby residential properties in terms of noise and vehicular movement, however they will be for a temporary period only and the timing and operations associated with construction are controlled by separate legislation outwith the planning remit.

- 62 The Council's Transport Planner has been consulted on the proposal and has offered no objection subject to conditions, including the provision of a Construction Traffic Management Plan which will help to ensure that vehicles movements from construction operations have as minimal an impact as possible on the local population.
- 63 It is noted that Seamab School have raised concerns regarding the use of the access route to the proposed turbine house and that the school own the bridge and are responsible for maintenance. Similar concerns have been raised regarding an existing access track where the pipeline is proposed in Rumbling Bridge. The granting of planning consent does not allow a developer the right to develop private land or utilise private accesses and a separate agreement with any land owners or those responsible for maintenance will require to be reached out with the planning remit.

### **Archaeology**

- 64 An archaeological desk-based assessment and walk-over survey has been carried out by Scotia Archaeology to inform this application, following pre-application advice from Perth and Kinross Heritage Trust (PKHT). One previously unrecorded, potential archaeological site (MPK18511) has been identified at NT 02432 99809. This possible prehistoric burial mound consists of a large circular, tree-covered mound measuring roughly 30m in diameter in level pasture field. The hydro scheme runs to the immediate north of MPK18511. It is recommended that temporary fencing be erected around this potential archaeological site prior to the development and for its duration to ensure no accidental damage to the monument. This fenced area should include a suitable buffer where archaeological remains may be expected to be found. The fence line should be marked out by a professional archaeological contractor during a field visit. This can be covered by a suitably worded planning condition.

### **Economic Development/Community Benefit**

- 65 The developer has proposed a community benefit fund of £5000 per annum for the duration of the feed in tariff (20 years). The developer has also indicated that they may be willing to increase this depending on the feed in tariff obtained. This offer from the developer is not an issue which can be secured directly through any planning consent granted, however I would expect the developer to contact the community to arrange this. The Community Council will be aware of this offer as they have been formally consulted on the proposal and I would urge them to make contact with the developer to discuss this further. The developer has also offered a contribution of £10,000 toward improving and upgrading access paths in the area which is referred to in the public access section below.

## **Noise/Residential Amenity**

- 66 The planning system has an important role to play in preventing and limiting noise pollution. Although the planning system cannot tackle existing noise problems directly, it has the task of guiding development to the most suitable locations and regulating the layout and design of new development. The noise implications of development can be a material consideration in determining applications for planning permission. Sound levels in gardens and amenity areas also need to be considered in terms of enabling a reasonable degree of peaceful enjoyment of these spaces for residents and this is an issue that has been raised in letters of representation.
- 67 Following on-going discussions with Environmental Health a noise survey has been submitted to establish the potential noise impact of this type of scheme.
- 68 Currently the predominant source of noise in the area is the A977 Kinross to Kincardine Road. Due to the nature of the application site, any low frequency noise created by the proposed power generating equipment may propagate over a large distance if this is not adequately controlled. The closest residential property to the power house is 7 Old Station, Rumbling Bridge which is approximately 220 metres to the east of the proposed powerhouse site.
- 69 The applicant has submitted an updated noise assessment dated 3 October 2013. Within this a noise propagation model in accordance with ISO9613 and Noise Rating (NR) curves were used as references for assessment.
- 70 The report states that at all noise sensitive receptors, the predicted noise levels will remain below the recommended day time and night time NR criteria, NR 30 and NR 20 respectively. Environmental Health therefore have no objections to the application however in view of the numerous objections raised relating to noise concerns, conditions are recommended in order to protect residential amenity.
- 71 A letter of representation has raised concern regarding the noise created from the discharge of water from the outfall back into the river. In my view the impact of this will be minimal and any noise created is unlikely to be any more significant than the noise from the existing river flows.

## **Flows**

- 72 The falls at Rumbling Bridge are an attractive feature and tourist attraction and therefore the impact on these falls of the abstraction of water requires to be considered. The flow data submitted indicates that there will be an impact on average flow conditions which would have some visual impact on the actual flow over the falls, however the impact on high flows when it can be argued that views of the falls would be the most spectacular would be minimal as the scheme would only be abstracting a very small percentage of the available flow. Additionally there is little actual evidence to suggest that a small reduction in the flow of water would have an adverse impact on visitor experience. Tourism visits are likely to be greatest during the summer months when flows are at their lowest level in any case.

73 Currently the site offers the opportunity for visitors to experience the river's water features (waterfalls, cascades etc) under the full range of natural flow conditions (i.e very low to very high flows). The opportunity to experience the features under the full range of different natural flows conditions contributes to the quality of the recreational experience. The natural sense of the water features and knowledge that they are changeable in appearance is part of the appreciation of the site. Currently visitors with preference for experiencing water features under certain flow conditions may exercise those preferences when timing their visit. Others can visit on multiple occasions to experience the features under a range of flow conditions. One off visitors can experience the water features under flow conditions in keeping with weather conditions immediately preceding the visit. There is no preference shared by all which would elevate the recreational value of the site when at a particular flow condition compared with its value at any other flow condition. I am therefore satisfied that the proposed hydro scheme will not have any significant impact on the visual amenity of the falls at Rumbling Bridge.

#### **Species and Habitats**

74 The submission appears competent in identifying and surveying for protected species likely to be present across the development site and makes reasoned mitigation proposals to reduce the risk of any damaging impacts. This includes the need for contemporary surveys to inform disturbance mitigation efforts and to avoid direct harm to protected species. The mitigation proposals described in the submission, if followed, are likely to ensure compliance with the Wildlife and Countryside Act 1981 (as amended) and avoid harmful and illegal impacts on protected species and habitats. Suitably worded conditions can cover this aspect.

75 Scottish Natural Heritage (SNH) advises that the responsibility to ensure compliance with the Wildlife and Countryside Act remains with the developer. If new surveys discover signs of protected species in close proximity to the proposed works then a licence from SNH may be required.

76 Letters of representation have raised concern regarding the potential impact on fish. Neither SEPA nor SNH have raised concerns in this regard and surveys have been undertaken for fish. Given the lack of any objection from statutory consultees I am satisfied that the impact on fish has been fully considered and can be suitably mitigated.

#### **River Jelly Lichen and other Lichens**

77 The impact on river jelly lichen and other lichens has been raised in letters of representation. River Jelly Lichen (RJL) is an aquatic lichen listed on Schedule 8 of the Wildlife and Countryside Act (1981). It is also a UK Biodiversity Action Plan (BAP) priority species and is nationally scarce. RJL is currently recorded in 18 rivers in Scotland and is known to have declined elsewhere in the UK.

- 78 RJL grows on bedrock and boulders within rivers and requires frequent inundation. It can only withstand short periods of exposure resulting from lowered water levels. As the hydro-scheme will not begin to operate until Q60 is reached and with the application of a compensation flow of Q80 SEPA do not expect RJL to be exposed more frequently than as occurs under the current natural flow regime. SEPA also advise that the scale of impact is 'negligible' to 'very small' within Table 26 of SEPA's WAT-SG-67 guidance.
- 79 However, there remains a small risk of increased sediment deposition as a result of operation of the scheme. Increased sediment deposition could smother and kill RJL. SNH recommend that sediment issues are considered in the vicinity of the intake weir and mitigated for in a sediment management plan.
- 80 The lichen survey report recorded a number of other nationally rare or scarce lichens Those recorded in the aquatic zone, alongside RJL, could be considered to be at risk, although if the same advice is followed for RJL regarding sediment management they should be similarly protected from any possible increased sediment deposition as a result of operation of the scheme. This can be covered by a suitably worded planning condition.

#### **Fish**

- 81 The intake has been re-designed to incorporate a fish pass and SEPA have been consulted in regard to the potential impact on fish specifically in regard to a letter received from the Forth District Fisheries Board. SEPA have confirmed that they have now issued a CAR License for this scheme which has fully considered the potential impact on fish and conditions have been included within the CAR License to address this impact. This has been confirmed in writing by SEPA. SNH have also raised no objection in regard to the potential impact on fish. Given that this matter has been suitably addressed through CAR I am satisfied in terms of planning legislation.

#### **Public Access**

- 82 Outdoor Access has now been given a new context in Scotland, since the Land Reform (Scotland) Act 2003. This establishes a duty on local authorities to uphold the outdoor access rights as specified in Section 13(1) of the Act. However, this duty on local authorities does not stop them from carrying on with the authority's other functions, an example of this is when they are considering planning applications for development on land over which access rights are exercisable, they will still be able to give consent for developments. Although, where appropriate, local authorities should consider attaching a suitable planning condition to enable them to ensure reasonable continuing public access.
- 83 The Council's Access Officer has raised the potential impact on public access and the impact on public access was considered prior to submission. The developer has agreed to contribute £10,000 in the hope that this can be put toward to the re-instatement of a pedestrian crossing over the River Devon which was washed away in a flood in January 2011. Having spoken to Countryside Greenspace they have advised that £10,000 would equate to

around 5% of the total cost of a new bridge and there is no budget available to cover the remainder of the cost. They have indicated, however, that the contribution could be used to improve the network of public paths in and around Rumbling Bridge, particularly those upstream of the public road which crosses the gorge which the Council manage. I welcome this proposed contribution and feel it would be of benefit to the overall recreational use of the area and complies with the requirements of Policy 38 of the KALP which seeks to improve public access to the countryside and makes specific reference to Rumbling Bridge Gorge. This can be secured by a suitably worded Section 69 legal agreement. Payment would likely be triggered by the commencement of development or the scheme generating electricity and it would be the Council who undertake any upgrades using the contribution.

- 84 I recommend conditions to seek details of the proposed sign board at the intake and full details of any diversions for the core path network to ensure the routes remain open to the public both during construction and upon completion.

### **Clarity of Plans**

- 85 Some queries have been raised as to the exact position of the pipeline route in relation to private access tracks and private garden ground. It is noted the plans indicate that the pipe may pass through a private access track and potentially through private garden ground. As outlined above the granting of planning consent does not guarantee a developer access to private land to carry out work and a separate agreement would have to be reached with any landowner to allow development to proceed.

### **Grid Connection**

- 86 No exact details have been provided on the proposed grid connection but the agent has indicated that it is likely to be in the form of an underground cable rather than pole mounted cables. The use of an underground cable is considered more appropriate given the location of the site within an Area of Great Landscape Value. The exact details of this can be requested through a suitably worded planning condition.

## **PROCEDURAL MATTERS**

- 87 *'Stop the Clock' Agreement*

The applicant agreed to 'stop the clock' on this planning application from the 6 May 2013 to allow for further details to be submitted in regard to tree felling and noise impact. The clock was stopped until 24 December 2013. To this end, the amended 2 month determination date was therefore moved until 24 December 2013.

## **LEGAL AGREEMENTS**

- 88 Section 69 agreement required to secure contribution of £10,000.



## **DIRECTION BY SCOTTISH MINISTERS**

- 89 Under the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008, regulations 30 – 32 there have been no directions by the Scottish Government in respect of an Environmental Impact Assessment screening opinion, call in or notification relating to this application.

## **CONCLUSION AND REASONS FOR RECOMMENDATION**

- 90 The proposed development would contribute to the Scottish Government's target of 100% of electricity generation from renewable energy sources by 2020. I have taken account of the potential impacts the development may have on the environment and sensitive receptors and conclude that a grant of planning permission for the proposed development with conditional control to secure mitigation measures would comply with the Development Plan for the area. In this case there are no material considerations that would justify refusal of the application.

## **RECOMMENDATION**

### **A Approve the application subject to the following conditions:**

- 1 The proposed development must be carried out in accordance with the approved drawings and documents, unless otherwise provided for by conditions imposed on the planning consent.
- 2 Prior to the commencement of works on the development, the applicant shall submit for the written approval of the Planning Authority a Construction Traffic Management Scheme (TMS) which shall include the following:
  - (a) restriction of construction traffic to approved routes and the measures to be put in place to avoid other routes being used;
  - (b) timing of construction traffic to minimise impact on local communities particularly at school start and finishing times, on days when refuse collection is undertaken, on Sundays and during local events;
  - (c) a code of conduct for HGV drivers to allow for queuing traffic to pass;
  - (d) arrangements for liaison with the Roads Authority regarding winter maintenance;
  - (e) emergency arrangements detailing communication and contingency arrangements in the event of vehicle breakdown;
  - (f) arrangements for the cleaning of wheels and chassis of vehicles to prevent material from construction sites associated with the development being deposited on the road;
  - (g) arrangements for cleaning of roads affected by material deposited from construction sites associated with the development;
  - (h) arrangements for signage at site accesses and crossovers and on roads to be used by construction traffic in order to provide safe access for pedestrians, cyclists and equestrians;
  - (i) details of information signs to inform other road users of construction traffic;

- (j) arrangements to ensure that access for emergency service vehicles are not impeded;
- (k) co-ordination with other major commercial users known to use roads affected by construction traffic;
- (l) traffic arrangements in the immediate vicinity of temporary construction compounds;
- (m) the provision and installation of traffic counters at the applicant's expense at locations to be agreed prior to the commencement of construction;
- (n) monitoring, reporting and implementation arrangements; and
- (o) arrangements for dealing with non-compliance.
- (p) details of HGV movements to and from the site

The TMS as approved shall be strictly adhered to during the entire site construction programme all to the satisfaction of the Council as Planning Authority unless otherwise agreed in writing.

- 3 Development shall not commence until an independent and suitably qualified Ecological Clerk of Works (ECoW) or Environmental Manager has been appointed at the developers expense. Details of this appointment shall be subject to the prior written approval of the Planning Authority. The appointed person will remain in post for the duration and subsequent restoration of the proposed development. The ECoW or Environmental Manager in representation of the Planning Authority relating to this development shall have responsibility for the following:

- a) Implementation of the Construction Environmental Management Plan (CEMP) approved by this permission.
- b) Authority to stop operations or to alter construction methods should there be any works occurring which are having an adverse impact on the natural heritage.
- c) Prior to the commencement of development they shall provide an environmental / ecological tool box talk for construction staff.
- d) They will have authority to amend working practices where required. Any amendments shall be submitted to the Council as Planning Authority as an addendum to the approved CEMP.
- e) They shall make weekly visits to the development site at a time of their choosing. No notification of this visit is required to be given to the developer or contractor.
- f) They are required to submit a detailed monthly report for the review of the Planning Authority in consultation with SEPA for the duration of development.
- g) They shall notify the Council as Planning Authority in writing of any requirement to halt development in relation to this condition as soon as reasonably practicable.

The above shall be implemented to the satisfaction of the Council as Planning Authority until completion of development.

- 4 Prior to any decommissioning of the site a Decommissioning Method Statement shall be submitted for the approval of the Council as Planning Authority in consultation with SNH. This method statement should ensure there is a process in place for ensuring good practice working methods are used for the removal of infrastructure and site restoration.
- 5 Any approved Decommissioning Method Statement shall be implemented and overseen by an independent Environmental Manager who shall have powers similar to the Environmental Manager/Ecological Clerk of Works employed during the construction phase.
- 6 Prior to the commencement of site clearance details of trees to be retained and the comprehensive approach to their protection in accordance with BS 5837:2012 "Trees in relation to Design, Demolition and Construction" shall be submitted for the written approval of the Council as Planning Authority. Following tree works the protection scheme shall be installed immediately in accordance with the plan unless phasing has been proposed and approved. The approved Tree Protection measures shall not be removed, breached or altered without prior written authorisation from the local planning authority but shall remain in a functional condition throughout the entire development or as per the phasing plan. If such protection measures are damaged beyond effective functioning then works that may compromise the protection of trees shall cease until the protection can be repaired or replaced with a specification that shall provide a similar degree of protection.
- 7 Prior to the commencement of development the operator of the hydro scheme shall have written permission from the relevant competent authority to export electricity to the National Electrical Grid. Details of the connection point and methods of connecting to the grid from the powerhouse shall be submitted for approval of the Council as Planning Authority. Thereafter the connection shall be installed in accordance with the approved method.
- 8 Prior to Commencement of Development, a fully detailed landscaping mitigation plan which will ensure there is no net loss of trees associated with the felling required to implement the consent shall be submitted to and approved in writing by the Planning Authority. Measures to protect the new planting from animals should be included. The approved scheme shall be fully implemented to the satisfaction of the Planning Authority no later than the first planting season following the Commissioning of Development. Any plant failures through disease, weather exposure, neglect or damage shall be replaced with equivalent species within one year of such failure.
- 9 In the event the development fails to produce electricity on a commercial basis to the public network for a continuous period of 12 months with no realistic expectation of resumption in the foreseeable future, then, unless otherwise agreed in writing with the Planning Authority, it shall be deemed to have permanently ceased to be required. The Planning Authority shall have due regard to the circumstances surrounding the failure to generate and shall take any decision following discussion with the Company and such other parties it considers appropriate. If the Development is deemed to have ceased to be required the Company shall cause the Development to be decommissioned and

the site will be reinstated within a period of eighteen months following the expiry of such period of cessation or within such timescale as agreed in writing by the Planning Authority.

Reinstatement shall include the removal of the above ground infrastructure, if considered necessary and restoration of the natural water regime to normal flows, to the written satisfaction of the Planning Authority in consultation with other relevant authorities in accordance with condition 5.

- 10 All vehicles associated with the development shall park within the designated compound areas only to the satisfaction of the Council as Planning Authority.
- 11 Prior to the commencement of any development full design details including sectional drawings and landscaping/restoration details to minimise visual impact of the access track to the powerhouse shall be submitted for the written approval of the Planning Authority. The details, as approved, shall be implemented as part of the site development and completed in their entirety prior to the hydro scheme becoming operational.
- 12 Prior to the commencement of any development full details and samples of the stonework, timber cladding, roof slates at the powerhouse/oufall area shall be submitted for the written approval of the Planning Authority. The details, as approved, shall be implemented as part of the site development and completed in their entirety prior to the hydro scheme becoming operational.
- 13 No development shall take place until fencing has been erected, in a manner to be agreed with Perth and Kinross Heritage Trust and the Planning Authority, about MPK18511 Briglands Mound. Also, no works shall take place within the area inside that fencing without the prior agreement of the Planning Authority and Perth and Kinross Heritage Trust.
- 14 Prior to the commencement of any development a detailed sediment management shall be submitted for the written approval of the Planning Authority in consultation with Scottish Natural Heritage (SNH). The details, as approved, shall be strictly adhered to during the development of the site.
- 15 A pre construction bat survey shall be undertaken of the trees proposed to be felled adjacent to the intake point to verify that these trees do not support bat roosts. If any bat roosts are found details of mitigation measures shall be submitted to the Council as Planning Authority for written approval in consultation with SNH. The mitigation measures, as approved shall be strictly adhered to during the development of the site.
- 16 A pre construction otter survey shall be undertaken to re-check the survey work undertaken and submitted with the application. This should ensure that there is no destruction of holts, no construction works are closer than 30m from an otter holt and no natal holts have been identified. If any of the above are found the applicant will require a European Protected Species License from SNH. If any otter holts are found details of mitigation measures shall be submitted to the Council as Planning Authority for written approval in consultation with SNH. The

mitigation measures, as approved shall be strictly adhered to during the development of the site.

- 17 A pre construction survey of all trees proposed for felling shall be undertaken to determine the presence of any red squirrel dreys. If any red squirrels dreys are found a license from SNH will be required. If any red squirrel dreys are found details of mitigation measures shall be submitted to the Council as Planning Authority for written approval in consultation with SNH. The mitigation measures, as approved shall be strictly adhered to during the development of the site.
- 18 A pre construction survey of badgers shall be undertaken to establish if any new sets have been formed in the period since the initial badger survey. If any sets are found details of mitigation measures shall be submitted to the Council as Planning Authority for written approval in consultation with SNH. The mitigation measures, as approved shall be strictly adhered to during the development of the site.
- 19 Power generating equipment shall be acoustically enclosed to attenuate sound there from, such that it does not exceed Noise Rating 30 between the hours of 0700 and 2300 hours or Noise Rating 20 between the hours 2300 and 0700 hours within any neighbouring noise-sensitive property. The measurement shall be taken with the windows slightly open and the figure when measured and/or calculated and plotted on a Noise Rating chart, if considered necessary by the Council as Planning Authority in the event that any noise nuisance complaint is authenticated.
- 20 The Powerhouse shall be designed and constructed to the satisfaction of the Planning Authority to ensure that nearby dwellings are not subjected to Vibration Dose Values in excess of 0.2 to 0.4 m/s<sup>1.75</sup> between 2300 and 0700 hours (as set out in Table 1 of BS 6472-1:2008 Evaluation of human exposure to vibration in buildings) as a result of vibration from plant associated with the application.
- 21 Construction procedures outlined in section 5 of the Indicative Construction Method Statement dated 24 April 2013 will be implemented in full to the satisfaction of the Planning Authority.
- 22 Development should not begin until a scheme to deal with the contamination on the site has been submitted to and approved in writing by the planning authority. The scheme shall contain proposals to deal with the contamination to include:
  - I. the nature, extent and type(s) of contamination on the site
  - II. measures to treat/remove contamination to ensure the site is fit for the use proposed
  - III. measures to deal with contamination during construction works
  - IV. condition of the site on completion of decontamination measures

Before the scheme is brought into operation the measures to decontaminate the site shall be fully implemented as approved by the planning authority. Verification that the schemes proposals have been fully implemented must also be submitted to the planning authority.

## Reasons

- 1 To ensure that the development is carried out in accordance with the plans approved.
- 2 In the interests of pedestrian and traffic safety.
- 3 To ensure a suitably qualified person oversees management of ecological interests on the site.
- 4 To ensure that the site is reinstated to the satisfaction of the Planning Authority.
- 5 To ensure a suitably qualified person oversees management of ecological interests on the site.
- 6 In order to ensure the protection of all retained trees on the site.
- 7 To ensure that the plant is capable of exporting electricity to the national grid.
- 8 To ensure that the proposed development does not prejudice the appearance of the locality and to preserve and enhance nature conservation interests.
- 9 To ensure the development is decommissioned and the site reinstated when ceased to generate electricity.
- 10 In the interests of pedestrian and traffic safety
- 11 In the interests of visual amenity and to protect the landscape character of the area.
- 12 In the interests of visual amenity
- 13 In order to protect sites of archaeological interest
- 14 To mitigate any impact on river jelly lichen and other scarce or rare lichens
- 15 In order to protect bats
- 16 In order to protect otters
- 17 In order to protect red squirrels

- 18 In order to protect badgers
- 19-21 In order to protect residential amenity
- 22 In order to deal with any contamination of the land

## **B JUSTIFICATION**

The proposal is considered to comply with the Development Plan and there are no other material considerations that would justify a departure therefrom.

## **C PROCEDURAL NOTES**

No consent shall be issued until a Section 69 Legal Agreement has been signed between the developer and the Council regarding the payment of a sum of £10,000 to be put toward the upgrade of public access routes in the local area.

## **D INFORMATIVES**

- 1 Under Section 27A of the Town and Country Planning (Scotland) Act 1997 (as amended) the person undertaking the development is required to give the Planning Authority prior written notification of the date on which it is intended to commence the development. A failure to comply with this statutory requirement would constitute a breach of planning control under section 123(1) of that Act, which may result in enforcement action being taken.
- 2 This development will require the 'Display of notice while development is carried out', under Section 27C(1) of the Town and Country Planning Act 1997, as amended, and Regulation 38 of the Development Management Procedure (Scotland) Regulations 2008. The form of the notice is set out in Schedule 7 of the Regulations and a draft notice is included for your guidance. According to Regulation 38 the notice must be:
  - Displayed in a prominent place at or in the vicinity of the site of the development
  - Readily visible to the public
  - Printed on durable material.
- 3 As soon as practicable after the development is complete, the person who completes the development is obliged by Section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended) to give the Planning Authority written notice of that position.
- 4 The applicant should ensure that any existing wayleaves for maintenance or repair to existing private water supplies or septic drainage infrastructure in the development area are honoured throughout and after completion of the development.

- 5 This planning permission will last only for three years from the date of this decision notice, unless the development has been started within that period. (See Section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended).
- 6 No work shall be commenced until an application for building warrant has been submitted and approved.
- 7 The applicant should make contact with Perth and Kinross Heritage Trust so that the procedure of works required for the archaeological condition can be discussed.
- 8 The applicant should be aware of the regulatory guidelines indicated by SEPA in their consultation response dated 8 August 2013.

Background Papers: 12 letters of representation

Contact Officer: John Williamson – Ext 75360

Date: 21 November 2013

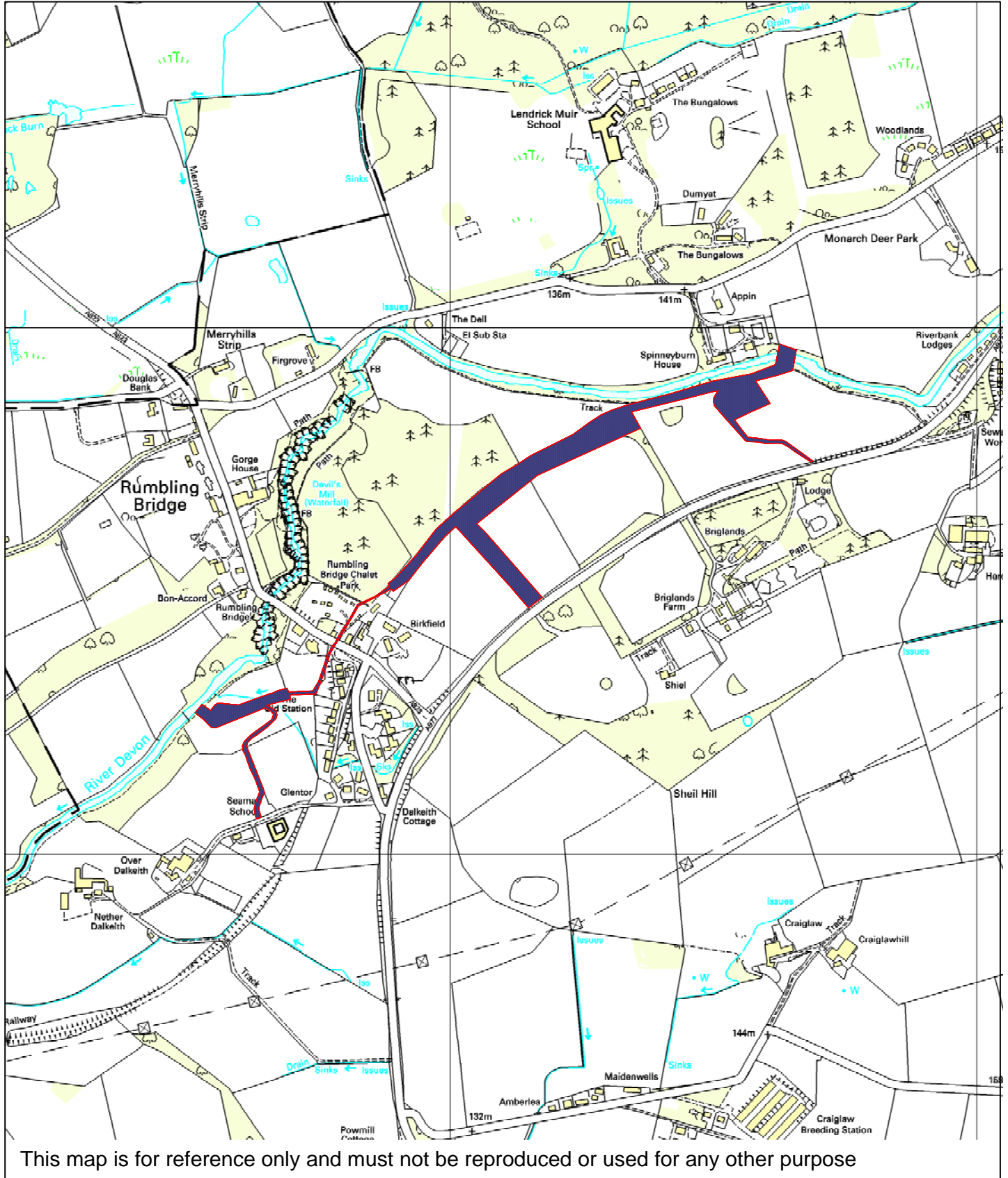
**Nick Brian**  
**Development Quality Manager**

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