

Appendix 8.1: Desk Study and Legal/Policy Context



Loch Liath Wind Farm Ltd

Loch Liath Wind Farm EIA

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Final report
Prepared by LUC
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Bristol
Edinburgh
Glasgow
London
Manchester

landuse.co.uk

Land Use Consultants Ltd
Registered in England
Registered number 2549296
Registered office:
250 Waterloo Road
London SE1 8RD

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Appendix 8.1

Desk Study and Legal/Policy Context

Introduction

Scope

1.1 This Appendix details the full methods and results of the desk study undertaken to inform the Ecological Impact Assessment (EclA) of the proposed Loch Liath Wind Farm (hereafter referred to as the 'Proposed Development'). The Ecological Impact Assessment is provided in **Chapter 8: Ecology** of the Environmental Impact Assessment Report (EIA Report).

1.2 To ensure that the scope of the desk study is fully understood, this Appendix also sets out the legal context that creates the mechanisms for designated sites and protected species, which subsequently form the basis of the EclA.

Supporting Documents

1.3 This Appendix supports the EclA in addition to the following Appendices:

- **Appendix 8.2: Habitats and Vegetation Survey Report;**
- **Appendix 8.3: Protected Species Survey Report;**
- **Appendix 8.4: Bat Survey Report;** and
- **Appendix 8.5: Outline Restoration and Enhancement Plan.**

1.4 This Appendix is supported by the following figures in of the EIA Report:

- **Figure 8.1: Ecology Survey Area;** and
- **Figure 8.2: Desk Study Area.**

Terminology and Study Areas

1.5 The following terminology is used throughout this Appendix:

- **Site**
 - All land within the red line boundary (as shown in **Figure 8.1**).
- **Proposed Development**
 - The physical process involved in the development of the land at Loch Liath Wind Farm including construction and, operation of an up to 13 turbine wind farm and ancillary infrastructure (described in detail in **Chapter 4: Project Description** of the EIA Report).
- **Study Area**
 - All land within which the desk study was undertaken (2km, 5km and 10km of the turbine area) as shown in **Figure 8.2**.

Relevant Legislation

1.6 The protections afforded to ecological features in Scotland are enshrined in the following key legislation:

- The Conservation of Habitats and Species Regulations 2017 (as amended);
- The Conservation (Natural Habitats, &c.) Regulations 1994 (as amended);
- The Wildlife and Countryside Act 1991 (as amended); and

- The Protection of Badgers Act 1992 (as amended).

1.7 A brief summary of each piece of legislation is provided below, with specific reference to development planning.

1.8 National and local planning policy of relevance to ecology are not discussed in this Appendix but are set out in **Chapter 5: Statutory and Policy Framework**, and compliance with these is set out in the Planning Statement which will accompany the application for consent.

The Conservation of Habitats and Species Regulations 2017 (as amended)

1.9 The European Habitats Directive (Directive 92/42/EEC) has been transposed into UK national legislation via the Conservation of Habitats and Species Regulations 2017 (as amended). These Regulations apply to specific reserved and devolved activities on land in Scotland, and in Scottish inshore waters, including for consents under section 36 of the Electricity Act 1989.

European Sites

1.10 The term 'European site' is used to refer to what were previously known as 'Natura' sites. These sites were originally designated as part of the 'Natura 2000' network, a Europe-wide system of sites designated for their ecological value. Sites are either designated as Special Areas of Conservation (SACs), the qualifying features for which are normally internationally important habitats or species assemblages, or Special Protection Areas (SPAs), which qualify for their assemblages of birds.

1.11 Ramsar sites, which support internationally important wetland habitats, are listed under the Convention on Wetlands of International Importance as 'Waterfowl Habitat' (Ramsar Convention, 1971), and form part of the Natura 2000 network in Europe. All Ramsar sites in Scotland are also European sites and are protected under the relevant statutory regimes.

1.12 SACs and SPAs receive considerable protection through the Habitats Regulations and these protections are normally reflected in national and local planning policy. Where developments have the potential to affect SACs or SPAs, an assessment process (Habitats Regulations Assessment) must first be undertaken.

1.13 In order that potential effects on European sites can be fully understood, it is important that they are considered fully in EclA desk studies.

1.14 There is no change to the protection of SACs or SPAs as a result of the United Kingdom's exit from the European Union, and the requirements of the Directives continue to be relevant to the management of European sites.

The Conservation (Natural Habitats, &c.) Regulations 1994 (as amended)

1.15 In Scotland, the European Habitats Directive has been transposed into national legislation via the Conservation (Natural Habitats &c.) Regulations 1994 (as amended). The Habitats Regulations provide the highest level of legal protection available to ecological features and make provisions for the following protected species.

European Protected Species (EPS)

1.16 The Habitats Regulations afford wide-ranging protections to a list of species considered to be of international conservation importance, under Schedule 2. A species is normally considered important where it plays an important role in wider ecosystems and has historically suffered significant population decline. With regard to EPS, it is an offence to:

- Capture, injure or kill such an animal;
- Harass an animal or group of animals;
- Disturb an animal while it is occupying a structure or place used for shelter or protection;
- Disturb an animal while it is rearing or otherwise caring for its young;
- Obstruct access to a breeding site or resting place, or otherwise deny an animal use of a breeding site or resting place;

- Disturb an animal in a manner or in circumstances likely to significantly affect the local distribution or abundance of the species;
- Disturb an animal in a manner or in circumstances likely to impair its ability to survive, breed or reproduce, or rear or otherwise care for its young;
- Disturb an animal while it is migrating or hibernating;
- Take or destroy an animal's eggs (in Scotland, this is relevant only to the great crested newt and natterjack toad); and
- Disturb any cetacean (dolphin, porpoise or whale).

1.17 There is no change to the protection of EPS as a result of the United Kingdom's exit from the European Union.

The Wildlife and Countryside Act 1981 (as amended)

1.18 The Wildlife and Countryside Act 1981 (as amended) (WCA) is domestic legislation that gives rise to designated sites, regulates the management of invasive species and provides protections for species of national conservation importance. Important features of the legislation in relation to protected sites and species are set out below.

Sites of Special Scientific Interest (SSSI)

1.19 The SSSI network in the UK extends to a system of sites designated for their national conservation value. Sites are designated for their biodiversity, habitats or species assemblages. There is a general presumption against development in SSSIs; however where development is proposed, SSSI consent is required. SSSI consent will often necessitate extensive mitigation or compensation. For this reason, it is important that EclA desk studies identify SSSIs that may be affected by Proposed Development.

Protected Species

1.20 Under the WCA Schedules 5 and 6, species considered to be of national conservation importance receive legal protections, often very similar to the protections available to EPS. For this reason, it is important that EclA desk studies identify existing records of WCA protected species.

The Protection of Badgers Act (1992)

1.21 Although badgers are not rare in Scotland, they continue to receive protection due to the high levels of persecution they suffer. Badgers and their setts receive protection against killing, disturbance and destruction and, therefore, knowledge of existing records is of importance to EclA desk studies.

Methods

1.22 **Table 8.1.1** lists the ecological features targeted in the desk study, and the resources used to identify them. In order that the study was appropriately focused, buffers were applied, and these are also shown within the table.

Table 8.1.1: Desk Study Targets

Ecological Feature	Comment	Desk Study Resource	Buffer from Site Boundary
Statutory Designated Sites	To include:	NatureScot SiteLink Website ¹	10km

¹ NatureScot (n.d.) NatureScot SiteLink [online]. Available at <https://sitelink.nature.scot/home> [Accessed July 2022]

² Department for Environment, Food and Rural Affairs *et al* (n.d.) Multi-Agency Geographic Information for the Countryside [online]. Available at: <http://magic.defra.gov.uk> [Accessed July 2022]

³ Scottish Environment Protection Agency (n.d.) Scotland's Environment Map [online]. Available at: <https://map.environment.gov.scot/sewebmap/> [Accessed July 2022]

⁴ As listed on the Ancient Woodland Inventory (AWI) of Scotland.

⁵ Highland Environment Forum (2021) Highland Nature Biodiversity Action Plan 2021-2026 [online]. Available at: <https://www.highlandenvironmentforum.info/wp-content/uploads/2022/01/Highland-Nature-Biodiversity-Action-Plan-2021-2026-compressed-.pdf> [Accessed July 2022]

Ecological Feature	Comment	Desk Study Resource	Buffer from Site Boundary
	<ul style="list-style-type: none"> ■ European sites (SACs and SPAs); ■ Ramsar sites; ■ National Nature Reserves (NNR); ■ SSSIs; and ■ Local Nature Reserves (LNR). 	Multi-Agency Geographic Information for the Countryside (MAGIC) ² Scotland Environment Mapping Service ³	
Non-statutory Designated Sites	To include: <ul style="list-style-type: none"> ■ Local Nature Conservation Sites (LNCS); ■ RSPB and Scottish Wildlife Trust (SWT) Reserves; and ■ Ancient/Long-established Woodland⁴. 	Highland Council Biodiversity Action Plan ⁵ MAGIC ² Scotland Environment Mapping Service ³	5km
Existing records of deep peat and carbon rich soils	N/A	The Carbon and Peatland Map ⁶	2km
Existing Records of EPS and WCA Protected Species	To include: <ul style="list-style-type: none"> ■ All native EPS and WCA protected species records, post-2000. 	National Biodiversity Network (NBN) Atlas Scotland ⁷ Highland Biological Recording Group (HBRG) ⁸ Proposed Bhlaraidh Wind Farm Extension Environmental Statement ⁹	2km for protected species 10km for bat species

Results

Designated Sites

1.23 Statutory and non-statutory designated sites within 5km and 10km of the Proposed Development are listed in **Table 8.1.2** below, in line with the Scoping Report. The location of these sites within the buffers described in **Table 8.1.1** are presented in **Figure 8.2**. Sites which are designated solely for geological features are not considered.

1.24 Any sites designated for their breeding bird assemblages are discussed further in **Chapter 9: Ornithology**.

1.25 There were no Ramsar sites or LNRs within 10km of the Proposed Development, and no LNCS or RSPB/SWT Reserves within 5km of the Proposed Development.

⁶ Scotland's Soils (2016) Carbon and Peatland Map [online]. Available at: <https://soils.environment.gov.scot/maps/thematic-maps/carbon-and-peatland-2016-map/> [Accessed July 2022]

⁷ National Biodiversity Network Atlas (n.d.) National Biodiversity Network Atlas, Scotland [online]. Available at: <https://scotland.nbnatlas.org/> [Accessed August 2022].

⁸ HBRG (<https://www.hbrg.org.uk/>) collect biological records within the Highland Council local authority area. A data request was submitted to HBRG on 21 July 2022.

⁹ SSE Generation Limited (2018) Bhlaraidh Wind Farm Extension Environmental Statement, Volume 2: Main Report, Chapter 5: Ecology.

Table 8.1.2: Designated Sites

Site Name	Designation	Approx. Distance and Orientation from Site	Qualifying Feature(s)
Statutory Sites (within 10km)			
River Moriston	SAC	Adjacent to the Site, at the south end of the Bhlaraidh Wind Farm existing access track	Atlantic salmon Freshwater pearl mussel
Ness Woods (including Easter Ness Forest SSSI and Glen Tarff SSSI)	SAC	4.9km south south-east	Mixed woodland on base-rich soils associated with rocky slopes Western acidic oak woodland Otter
Strathglass Complex	SAC	7.0km west	Alpine and subalpine heaths Blanket bog Bog woodland Plants in crevices on base-rich rocks Caledonian forest Dry heaths Tall herb communities Wet heathland with cross-leaved heath Clear-water lakes or lochs with aquatic vegetation and poor to moderate nutrient levels Montane acid grasslands Plants in crevices on acid rocks Acidic scree Mountain willow scrub Otter
North Inverness Lochs	SPA	5.1km north-east	Slavonian grebe; breeding
Loch Knockie and Nearby Lochs (including Knockie Lochs SSSI)	SPA	5.7km south-east	Slavonian grebe; breeding
Glen Affric to Strathconon	SPA	7.3km west	Golden eagle; breeding
Levishie Wood	SSSI	Adjacent to the Site, along the Bhlaraidh Wind Farm existing access track	Upland birch wood
Glen Affric	SSSI	7.1km west	Dragonfly assemblage Lichen assemblage Native pinewood
Balnagantach	SSSI	9.6km north-east	Club sedge
Glen Affric	NNR	6.7km west	Network of upland habitat assemblages

Site Name	Designation	Approx. Distance and Orientation from Site	Qualifying Feature(s)
Non-Statutory Designated Sites (within 5km)			
Numerous areas of named and unnamed woodland	Ancient Woodland	Extensive network in South Highland region. The proposed access follows an existing track through ancient woodland features (Coille Bhlaraidh) on the north side of Glen Moriston. With the exception of the Coille Bhlaraidh woodland, the nearest ancient woodland features are located approximately 0.7km north of the Site.	Woodland

Protected Species

1.26 A data search of relevant protected species records (post-2000) returned the following protected species results:

NBN Atlas

1.27 NBN Atlas⁷ identified 132 records of bat species within the 10km Study Area. Details are listed below in **Table 8.1.3**.

1.28 It is important to note that several bat records included multiple counts of individual bats where recorders had been surveying roosts, therefore the total number of individual bats is also included in **Table 8.1.3**.

1.29 No bats records were identified within the Site.

Table 8.1.3: NBN Atlas Bat Records (post-2000) within 10km of the Proposed Development

Species	Latin Name	Number of Records (Number of Individuals)
Common pipistrelle	<i>Pipistrellus pipistrellus</i>	62
Soprano pipistrelle	<i>Pipistrellus pygmaeus</i>	11 (285)
Unidentified pipistrelle species	<i>Pipistrellus</i> spp.	43 (487)
Daubenton's bat	<i>Myotis daubentonii</i>	2 (6)
Brown long-eared bat	<i>Plecotus auritus</i>	10 (86)
Unidentified bat	<i>Chiroptera</i>	4 (6)

1.30 NBN Atlas⁷ identified 19 records of protected species within the 2km Study Area and details are listed in **Table 8.1.4**. None of these records were within the Site.

Table 8.1.4: NBN Atlas Protected Species Records (post-2000) within 2km of the Site

Species	Latin Name	Number of Records	Most Recent Record
Red squirrel	<i>Sciurus vulgaris</i>	25	2021
Otter	<i>Lutra lutra</i>	2	2018

1.31 NBN Atlas returned no records of badger, pine marten or water vole within the 2km Study Area.

Highland Biological Recording Group (HBRG)

1.32 HBRG returned no records of protected species, excluding bats, within the 2km Study Area.

1.33 HBRG identified 646 records of bats within the 10km Study Area. None of these records were within the Site. Details are listed below in **Table 8.1.5**.

1.34 Several records of *Pipistrellus* spp. and brown long-eared bat roosts were identified within 2km; however, none of these were recorded within the Site.

1.35 It is important to note that several bat records comprised multiple counts of individual bats where recorders had been surveying roosts, therefore the total number of individual bats is also included in **Table 8.1.5**.

Table 8.1.5: HBRG Bat Records (post-2000) within 10km of the Proposed Development

Species	Latin Name	Number of Records (Number of Individuals)
Common pipistrelle	<i>Pipistrellus pipistrellus</i>	6 (74)
Soprano pipistrelle	<i>Pipistrellus pygmaeus</i>	4 (63)
Unidentified pipistrelle species	<i>Pipistrellus</i> spp.	26 (441)
Daubenton's bat	<i>Myotis daubentonii</i>	1 (5)
Brown long-eared bat	<i>Plecotus auritus</i>	6 (63)

Species	Latin Name	Number of Records (Number of Individuals)
Unidentified bat	<i>Chiroptera</i>	1

Proposed Bhlaraidh Wind Farm Extension EIA Report

1.36 The proposed Bhlaraidh Wind Farm extension lies adjacent to the south of the Site. Surveys undertaken to inform the EIA report for this proposal recorded field evidence of otter and water vole within the site of the proposed Bhlaraidh Wind Farm extension⁹. No evidence of wildcat, badger, red squirrel or pine marten was recorded.

Deep Peat and Carbon Rich Soil

1.37 NatureScot's Carbon & Peatland Map 2016⁶ identified continuous areas of high value 'Class 1' peatland, throughout the Study Area, with peripheral areas of high value 'Class 2' peatland.

1.38 These classes are defined as follows:

- **Class 1:** Nationally important carbon-rich soils, deep peat and priority peatland habitat. Areas likely to be of high conservation value.
- **Class 2:** Nationally important carbon-rich soils, deep peat and priority peatland habitat. Areas of potentially high conservation value and restoration potential.

1.39 Where areas of Class 1 and 2 peatland overlapped with the Phase 1 and NVC habitat surveys, consideration was given to the true ecological value of their habitats. Following completion of the peat surveys for the Site the indicative data provided by the Carbon & Peatland Map was updated (see **Chapter 7: Hydrology, Hydrogeology, Geology and Peat** and associated appendices). Detailed habitat survey results are presented in **Appendix 8.2**.