

Appendix 8.1: Desk Study and Legal Context

Car Duibh Wind Farm Limited

**An Càrr Dubh Wind
Farm EIA**

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Study & Legal Context**

Final report

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Appendix 8.1 Desk Study & Legal 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 An Càrr Dubh 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: Bat Survey Report;**
- **Appendix 8.4: Protected Species Survey Report;** and
- **Appendix 8.5: Outline Restoration and Enhancement Plan (OREP).**

1.4 This Appendix is supported by the following figures which can be found in **Volume 2** of the EIA Report:

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

Terminology and Survey 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 whole physical process involved in the development of the land at An Càrr Dubh Wind Farm including construction, operation and decommission (not associated with a particular piece of land).
 - Encompasses the construction of a 13 turbine wind farm and associated infrastructure including access tracks, crane hardstandings, substation compound and underground cabling (described in detail in **Chapter 8** of the EIA Report).
- **Study Area**
 - All land within which the desk study was undertaken (2km, 5km and 10km of the Proposed Development) 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;
- 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 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 the 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 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
Statutory Designated Sites	To include: <ul style="list-style-type: none"> ■ European Sites (SACs and SPAs); ■ Ramsar Sites; ■ National Nature Reserves (NNR); ■ SSSIs; and 	NatureScot SiteLink Website ¹ Multi-Agency Geographic Information for the Countryside (MAGIC) ² Scotland Environment Mapping Service ³	10km

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

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

⁴ Argyll and Bute Council (2009) Argyll and Bute Biodiversity Action Plan [online]. Available at: <https://www.argyll-bute.gov.uk/news/2010/nov/local-biodiversity-action-plan-2010-2015-launched> [Accessed June 2022]

Ecological Feature	Comment	Desk Study Resource	Buffer from Site
	<ul style="list-style-type: none"> ■ Local Nature Reserves (LNR). 		
Non-statutory Designated Sites	To include: <ul style="list-style-type: none"> ■ Local Nature Conservation Sites (LNCS); ■ RSPB and Scottish Wildlife Trust Reserves; and ■ Ancient/Long-established Woodland. 	The Argyll and Bute Council Biodiversity Action Plan ⁴ MAGIC ³ Scotland Environment Mapping Service ⁴	5km
Existing records of deep peat and carbon rich soils	N/A	The Carbon and Peatland Map ⁵	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 ⁶ Ardchnonnel Wind Farm Environmental Statement ⁷	2km for Protected Species 10km for Bat Species

Data Requests

1.23 During scoping, Argyll and Bute Council (ABC) requested that The Scottish Wildlife Trust (SWT) and the Lorn Natural History Group were contacted to enquire if they held records for protected species within the Study Area.

1.24 LUC contacted SWT during scoping and were informed that all SWT records are uploaded annually to NBN Atlas, under a CC-BY licence⁸. As such, relevant SWT records would be sourced during the search of NBN Atlas.

1.25 Further consultation was also undertaken with the Lorn Natural History Group who advised that data could be obtained from the Argyll Biological Records Centre via the NBN Atlas.

Results

Designated Sites

1.26 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.

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

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

⁵ 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 June 2022]

⁶ National Biodiversity Network Atlas (n.d.) National Biodiversity Network Atlas, Scotland [online]. Available at: <https://scotland.nbnatlas.org/> [Accessed June 2022].

⁷ The Ardchnonnel Wind Farm Environmental Statement is available online on the Argyll and Bute Council planning portal <https://publicaccess.argyll-bute.gov.uk/online-applications/>, reference 13/02835/PP, appeal reference PPA-130-2045.

⁸ LUC (2022) SWT Response to Data Enquiry. Available upon request.

Table 8.1.2: Designated Sites within 5km and 10km from the Proposed Development

Site Name	Designation	Approx. Distance and Orientation from the Site	Qualifying Feature(s)
Statutory Sites (within 10km)			
Dalavich Oakwood	SSSI	2.6km west	Upland oak woodland, wet woodland
Ardchyline Wood	SSSI	3.0km south-east	Upland oak woodland
Glen Shira	SAC	7.4km north-east	Western acidic oak woodland
Beinn an Lochain	SSSI	8.5km east	Siliceous scree (includes boulder fields), tall herb ledge, upland assemblage
Hells Glen	SSSI	9.8km east	Bryophyte assemblage, lichen assemblage, upland oak woodland
Non-Statutory Designated Sites (within 5km)			
Coille Bhraghaid and other unnamed areas of woodland	Ancient Woodland	Within the Site (in the east)	Woodland
Numerous other areas of unnamed woodland	Ancient Woodland	Widespread within the 5km search area	Woodland

Protected Species

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

NBN Atlas

1.30 NBN Atlas⁷ identified 21 records of bat species within the 10km Study Area, none of which were within the Site. Details are listed below in **Table 8.1.3**.

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

Species	Scientific Name	Number of Records
Common pipistrelle	<i>Pipistrellus pipistrellus</i>	17

Species	Scientific Name	Number of Records
Soprano pipistrelle	<i>Pipistrellus pygmaeus</i>	2
Unidentified pipistrelle species	<i>Pipistrellus</i> spp.	1
Daubenton's bat	<i>Myotis daubentonii</i>	1

1.31 NBN Atlas⁷ identified 46 records of Protected Species within the 2km Study Area and details are listed in **Table 8.1.4**.

Table 8.1.4: Protected Species Records (post-2000) within 2km of the Proposed Development

Species	Scientific Name	Number of Records	Most Recent Record
Otter	<i>Lutra lutra</i>	1	2014
Red squirrel	<i>Sciurus vulgaris</i>	43	2021
Pine marten	<i>Martes martes</i>	1	2020
Harbour seal	<i>Phoca vitulina</i>	1	2020

1.32 Of the records in **Table 8.1.4**, a single record of red squirrel from 2013 was located within the Site.

1.33 There were no records of badger or water vole within the 2km Study Area.

Deep Peat and Carbon Rich Soil

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

1.35 This class is defined as follows:

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

1.36 Where areas of Class 2 designation 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: Geology, Hydrology, Hydrogeology and Peat** and associated appendices. Detailed habitat survey results are presented in **Appendix 8.2**.