

## **VOLUME 4: APPENDIX 1.1: APPENDIX V1-7.1: WILDLIFE LEGISLATION AND PLANNING POLICY**



# VOLUME 4: APPENDIX V1-7.1: WILDLIFE LEGISLATION & PLANNING POLICY

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## APPENDIX 7.1: WILDLIFE LEGISLATION AND PLANNING POLICY

### 1.1 Introduction

This Appendix sets out the European and national wildlife legislation and planning policies that have informed the ecological impact assessment presented in **Volume 1, Chapter 7: Ecology** of this EIA Report.

### 1.2 Legislation

#### 1.2.1 The Wildlife and Countryside Act (WCA) 1981 (as amended)

Part 1 of the Wildlife and Countryside Act (WCA) affords general protection to all species of wild bird and specific protection to flora and fauna listed in Schedules 1 (birds protected by special penalties), 5 (other animals), and 8 (flora, fungi and lichens). It is an offence (subject to exceptions) to:

- kill, injure, or take any wild bird;
- take, damage or destroy the nest of any wild bird while that nest is in use or being built;
- take or destroy an egg of any wild bird;
- disturb any wild bird listed on Schedule 1 of the WCA while nesting, or disturb the dependent young of such a bird (e.g. quail);
- kill, injure or take any wild animal listed on Schedule 5 (e.g. bats, great crested newt, common lizard);
- damage, destroy or obstruct places used for shelter or protection by wild animals listed on Schedule 5 and covered by Part 4A of the WCA (e.g. bats and great crested newt);
- intentionally disturb wild animals listed in Schedule 5, and covered by Part 4A of the WCA, that are occupying places of shelter and protection (e.g. bats and great crested newt); and
- pick, uproot or destroy any plant, fungi or lichen listed in Schedule 8.

In certain circumstances, licences can be granted to permit some actions prohibited under the WCA.

Schedule 9 provides lists of non-native flora and fauna that it is an offence to release or cause to spread in the wild. Of primary relevance in the context of proposed developments are flora e.g. invasive non-native plant species.

Part 2 of the WCA details the law regarding SSSIs and other protected areas within Great Britain.

#### 1.2.2 The Conservation (Natural Habitats &c.) Regulations 1994 (as amended in Scotland) (i.e. the Habitats Regulations)

The Habitats Regulations require the compilation and maintenance of a register of European sites, to include Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) classified under Council Directive 79/409/EEC on the Conservation of Wild Birds (the Birds Directive). When considering potentially damaging operations, the precautionary principle applies i.e. consent for the operations cannot be given unless it is demonstrated that there would be no adverse effect on the integrity of the European site.

The Habitats Regulations also afford protection to European Protected Species, e.g. bats and great crested newt, listed in Schedule 2. It is an offence (subject to exceptions) to deliberately capture, kill, disturb, or trade in listed animals. In certain circumstances, licences can be granted to permit some actions prohibited under the Habitats Regulations.

Regulation 9A requires that competent authorities must take such steps in the exercise of their functions as they consider appropriate to secure the preservation, maintenance and re-establishment of sufficient diversity and area of habitat for wild birds as appropriate, and having regard to the requirements of Article 2 of the Birds Directive.

### 1.2.3 Nature Conservation (Scotland) Act (NCA) 2004 (as amended)

Under the Nature Conservation (Scotland) Act (NCA) 2004 all public bodies in Scotland have a duty to further the conservation of biodiversity when carrying out their responsibilities. Section 1 of the Act states: *“It is the duty of every public body and office holder, in exercising any functions, to further the conservation of biodiversity so far as it is consistent with the proper exercise of those functions”*.

### 1.2.4 The Wildlife and Natural Environment (Scotland) (WANE) Act 2011 (as amended)

The Wildlife and Natural Environment (Scotland) (WANE) Act 2011 (as amended) is intended to protect Scotland’s environment from the damage that can be caused by non-native species. The Act amended earlier environmental legislation, including the Wildlife and Countryside Act 1981 and the Deer (Scotland) Act 1996 to provide guidance on the way land and the environment is managed in Scotland. The Act introduced a requirement for all public bodies in Scotland to make a report publicly available on their compliance with the ‘Biodiversity Duty’ every three years.

The ‘Biodiversity Duty’ is not only about protecting biodiversity through managing specific sites, habitats and species. It also aims to:

- Increase the level of understanding and connection between people and the living environment;
- Promote consideration of all our impacts on the natural world through our actions and decisions, including through procurement and use of resources; and,
- Encourage staff, partners and customers to engage with, understand and consider biodiversity.

### 1.2.5 The Protection of Badgers Act 1992 (as amended)

The Protection of Badgers Act 1992 (as amended) makes it an offence to kill or take a badger, to cruelly ill-treat a badger, or to interfere with a badger sett, including disturbing a badger while it is occupying a sett. In certain circumstances, licences can be granted to permit some actions prohibited under the Act.

## 1.3 Planning Policy

### 1.3.1 National

#### 1.3.1.1 National Planning Framework 4 (NPF4)

The National Planning Framework 4 (NPF4) adopted in February 2023 is the national special strategy for Scotland, and sets out the spatial principles, regional priorities, national developments and national planning policy.

Policy 3 (Biodiversity) aims to protect biodiversity, reverse biodiversity loss, deliver positive effects from development and strengthen nature networks and states that:

*“a) Development proposals will contribute to the enhancement of biodiversity, including where relevant, restoring degraded habitats and building and strengthening nature networks and the connections between them. Proposals should also integrate nature-based solutions, where possible.*

*b) Development proposals for national or major development, or for development that requires an Environmental Impact Assessment will only be supported where it can be demonstrated that the proposal will conserve, restore and enhance biodiversity, including nature networks so they are in a demonstrably better state than without intervention. This will include future management. To inform this, best practice assessment methods should be used. Proposals within these categories will demonstrate how they have met all of the following criteria:*

- i. the proposal is based on an understanding of the existing characteristics of the site and its local, regional and national ecological context prior to development, including the presence of any irreplaceable habitats;*
- ii. wherever feasible, nature-based solutions have been integrated and made best use of,*
- iii. an assessment of potential negative effects which should be fully mitigated in line with the mitigation hierarchy prior to identifying enhancements;*
- iv. significant biodiversity enhancements are provided, in addition to any proposed mitigation. This should include nature networks, linking to and strengthening habitat connectivity within and beyond the development, secured within a reasonable timescale and with reasonable certainty. Management arrangements for their long-term retention and monitoring should be included, wherever appropriate; and*
- v. local community benefits of the biodiversity and/or nature networks have been considered.*

*c) Proposals for local development will include appropriate measures to conserve, restore and enhance biodiversity, in accordance with national and local guidance. Measures should be proportionate to the nature and scale of development. Applications for individual householder development, or which fall within scope of (b) above, are excluded from this requirement.*

*d) Any potential adverse impacts, including cumulative impacts, of development proposals on biodiversity, nature networks and the natural environment will be minimised through careful planning and design. This will take into account the need to reverse biodiversity loss, safeguard the ecosystem services that the natural environment provides, and build resilience by enhancing nature networks and maximising the potential for restoration.”*

Policy 4 (Natural Places) aims to protect, restore and enhance natural assets making best use of nature-based solutions and states that:

*“a) Development proposals which by virtue of type, location or scale will have an unacceptable impact on the natural environment, will not be supported.*

*b) Development proposals that are likely to have a significant effect on an existing or proposed European site (Special Area of Conservation or Special Protection Areas) and are not directly connected with or necessary to their conservation management are required to be subject to an “appropriate assessment” of the implications for the conservation objectives.*

*c) Development proposals that will affect a National Park, National Scenic Area, Site of Special Scientific Interest or a National Nature Reserve will only be supported where:*

- i. The objectives of designation and the overall integrity of the areas will not be compromised; or*
- ii. Any significant adverse effects on the qualities for which the area has been designated are clearly outweighed by social, environmental or economic benefits of national importance.*

*All Ramsar sites are also European sites and/or Sites of Special Scientific Interest and are extended protection under the relevant statutory regimes.*

*d) Development proposals that affect a site designated as a local nature conservation site or landscape area in the LDP will only be supported where:*

- i. Development will not have significant adverse effects on the integrity of the area or the qualities for which it has been identified; or*
- ii. Any significant adverse effects on the integrity of the area are clearly outweighed by social, environmental or economic benefits of at least local importance.*

*e) The precautionary principle will be applied in accordance with relevant legislation and Scottish Government guidance.*



*f) Development proposals that are likely to have an adverse effect on species protected by legislation will only be supported where the proposal meets the relevant statutory tests. If there is reasonable evidence to suggest that a protected species is present on a site or may be affected by a proposed development, steps must be taken to establish its presence. The level of protection required by legislation must be factored into the planning and design of development, and potential impacts must be fully considered prior to the determination of any application.*

*g) Development proposals in areas identified as wild land in the Nature Scot Wild Land Areas map will only be supported where the proposal:*

- i. will support meeting renewable energy targets; or,*
- ii. is for small scale development directly linked to a rural business or croft, or is required to support a fragile community in a rural area."*

## 1.3.2 Local

### 1.3.2.1 Highland-wide Local Development Plan (HwLDP) 2012

The Highland-wide Local Development Plan (HwLDP) for the whole of the Highland area (excluding the Cairngorms National Park) was adopted in 2012. This will eventually be replaced by a new Highland Local Development Plan (HLDP), which is currently being prepared.

**Policy 57 (Natural, Built and Cultural Heritage)** states that:

1. *"For features of local/regional importance we will allow developments if it can be satisfactorily demonstrated that they will not have an unacceptable impact on the natural environment, amenity and heritage resource.*
2. *For features of national importance we will allow developments that can be shown not to compromise the natural environment, amenity and heritage resource. Where there may be any significant adverse effects, these must be clearly outweighed by social or economic benefits of national importance. It must also be shown that the development will support communities in fragile areas who are having difficulties in keeping their population and services.*
3. *For features of international importance developments likely to have a significant effect on a site, either alone or in combination with other plans or projects, and which are not directly connected with or necessary to the management of the site for nature conservation will be subject to an appropriate assessment. Where we are unable to ascertain that a proposal will not adversely affect the integrity of a site, we will only allow development if there is no alternative solution and there are imperative reasons of overriding public interest, including those of a social or economic nature. Where a priority habitat or species (as defined in Annex 1 of the Habitats Directive) would be affected, development in such circumstances will only be allowed if the reasons for overriding public interest relate to human health, public safety, beneficial consequences of primary importance for the environment, or other reasons subject to the opinion of the European Commission (via Scottish Ministers). Where we are unable to ascertain that a proposal will not adversely affect the integrity of a site, the proposal will not be in accordance with the development plan within the meaning of Section 25(1) of the Town and Country Planning (Scotland) Act 1997."*

**Policy 58 (Protected Species)** states that:

*"Where there is good reason to believe that a protected species may be present on site or may be affected by a proposed development, we will require a survey to be carried out to establish any such presence and if necessary a mitigation plan to avoid or minimise any impacts on the species, before determining the application.*

*Development that is likely to have an adverse effect, individually and/or cumulatively, on European Protected Species (see Glossary) will only be permitted where:*

- *There is no satisfactory alternative;*
- *The development is required for preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment; and*

- *The development will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.*

*Development that is likely to have an adverse effect, individually and/or cumulatively, on protected bird species will only be permitted where:*

- *There is no other satisfactory solution; and*
- *The development is required in the interests of public health or public safety.*

*This will include but is not limited to avoiding adverse effects, individually and/or cumulatively, on the populations of the following priority protected bird species:*

- *Species listed in Annex 1 of the EC Birds Directive;*
- *Regularly occurring migratory species listed in Annex II of the Birds Directive;*
- *Species listed in Schedule 1 of the Wildlife and Countryside Act 1981 as amended; and*
- *Birds of conservation concern.*

*Development that is likely to have an adverse effect, individually and/or cumulatively (see glossary), on other protected animals and plants will only be permitted where the development is required for preserving public health or public safety.*

*Development proposals should avoid adverse disturbance, including cumulatively, to badgers and badger setts, protected under the Protection of Badgers Act 1992 (as amended by the Nature Conservation (Scotland) Act 2004.)*

**Policy 59 (Other Important Species)** states that:

*“The Council will have regard to the presence of and any adverse effects of development proposals, either individually and/or cumulatively, on the Other Important Species which are included in the lists below, if these are not already protected by other legislation or by nature conservation site designations:*

- *Species listed in Annexes II and V of the EC Habitats Directive;*
- *Priority species listed in the UK and Local Biodiversity Action Plans;*
- *Species included on the Scottish Biodiversity List.”*

**Policy 60 (Other Important Habitats and Article 10 Features)** states that:

*“The Council will seek to safeguard the integrity of features of the landscape which are of major importance because of their linear and continuous structure or combination as habitat “stepping stones” for the movement of wild fauna and flora. (Article 10 Features). The Council will also seek to create new habitats which are supportive of this concept.*

*The Council will have regard to the value of the following Other Important Habitats, where not protected by nature conservation site designations (such as natural water courses), in the assessment of any development proposals which may affect them either individually and/or cumulatively:*

- *Habitats listed in Annex I of the EC Habitats Directive;*
- *Habitats of priority and protected bird species (see Glossary);*
- *Priority habitats listed in the UK and Local Biodiversity Action Plans;*
- *Habitats included on the Scottish Biodiversity List.*

*The Council will use conditions and agreements to ensure that significant harm to the ecological function and integrity of Article 10 Features and Other Important Habitats is avoided. Where it is judged that the reasons in favour of a development clearly outweigh the desirability of retaining those important habitats, the Council will seek to put in place satisfactory mitigation measures, including where appropriate consideration of compensatory habitat creation.”*

## 1.4 Other Plans & Policies

### 1.4.1 Scottish Biodiversity Strategy 2013

The Scottish Biodiversity Strategy 2013 highlighted Six Big Steps for Nature, identifying areas in which action should be undertaken: Ecosystem restoration; Investment in natural capital; Quality greenspace for health and education benefits; Conserving wildlife; sustainable management of land and freshwater; and Sustainable management of marine and coastal ecosystems. The Strategy does not list the huge range of actions, policies and strategies that have an impact on biodiversity. Instead, it sets out the principles and approaches adopted by the Scottish Government with its partners to meet the *2020 Challenge*.

### 1.4.2 Draft Scottish Biodiversity Strategy to 2045

The draft Scottish Biodiversity Strategy published in September 2023 sets out a clear ambition for Scotland to be Nature Positive by 2030, and to have restored and regenerated biodiversity across the country by 2045. The vision is:

- By 2045, Scotland will have restored and regenerated biodiversity across its land, freshwater and seas.
- Its natural environment, habitats, ecosystems and species, will be diverse, thriving, resilient and adapting to climate change.
- Regenerated biodiversity will drive a sustainable economy and support thriving communities, and people will play their part in the stewardship of nature for future generations.

### 1.4.3 Highland Nature Biodiversity Action Plan 2021 to 2026

The Highland Nature Biodiversity Action Plan (BAP) is the fourth BAP for Highland prepared since 2006 and identifies conservation and enhancement actions for important habitats and species at the local level. The list of Priority species (excluding birds) has been screened for relevance to the ecological impact assessment for the Proposed Development and a summary is provided in **Table 1**.

**Table 1: Screening of Highland Nature BAP Priority Species and Relevance to Proposed Development EclA**

Priority Species	Relevant/ Potentially Relevant to Proposed Development?	Rationale
Rare/ notable terrestrial invertebrates	x	Habitats within the Site have some potential to support rare / notable terrestrial invertebrate species but impacts on habitats are very minor, and no specific survey or assessment work has been undertaken for this group of species.
European beaver	x	No potential for species to be present within zone of influence.
Hedgehog	x	Negligible potential for species to be present within zone of influence.
Mountain hare	x	Negligible potential for species to be present within zone of influence.
Red squirrel	x	Site is outside the known range of this species in Scotland.
Scottish wildcat	✓	Potential for species to occur although previous national surveys have recorded only hybrid wildcats north of Lairg.
Water vole	✓	Species is present in the survey area.
Pine marten	✓	Potential for species to occur – field signs have been recorded in wider local area.

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Brown long-eared bat	x	No records of this species in survey area.
Daubenton's bat	x	No records of this species in survey area.
Natterer's bat	x	No records of this species in survey area.
Common, soprano and Nathusius' pipistrelle bats	✓	Common pipistrelle bat roost recorded at Bowside Lodge.
Trees and shrubs; juniper, sessile oak, aspen, wild crab apple	x	None of these species were recorded in survey area.
Flowering plants: alpine pearlwort, intermediate wintergreen, pugsley's marsh-orchid, purple oxytropis, mountain sandwort, drooping saxifrage, Rannoch rush, small cow-wheat, small white orchid, Scottish primrose, twinflower	x	None of these species were recorded in the survey area.
Ferns: forked spleenwort, Tunbridge filmy-fern	x	No specific ferns survey undertaken.
Bryophytes	N/A	No specific surveys were undertaken for these taxa, however where they were identified during wider vegetation surveys their presence and abundance was recorded.
Fungi	N/A	
Lichens	N/A	
Atlantic salmon	x	Aquatic species scoped out of ecological impact assessment as no impacts on watercourses that could support these species.
Arctic char	x	
European eel	x	
Lamprey	x	

The following Habitat Action Plans are also potentially relevant to the ecological impact assessment:

- Upland and Moorland
- Peatland and Wetland
- Woodland and Forest