

Environmental Impact Assessment (EIA) Report

LT384 Tealing to Westfield Overhead Line (OHL) 400 kV Upgrade

November 2024



Volume 4: Appendix 8.1 - Legislation and Policy

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1. LEGISLATION

1.1.1 The following nature conservation legislation is potentially relevant to the Proposed Development and has been considered during the preparation of this chapter:

- The Convention on Wetlands of International Importance especially as Waterfowl Habitat ('Ramsar Convention');
- Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) (the 'Habitats Regulations')¹;
- Wildlife and Countryside Act 1981 (as amended) (the 'WCA');
- Nature Conservation (Scotland) Act 2004 (as amended);
- Wildlife and Natural Environment (Scotland) Act 2011 (as amended) (the 'WANE Act');
- Protection of Badgers Act 1992 (as amended);
- Water Environment (Controlled Activities) (Scotland) Regulations 2011 (as amended) ('CAR'); and
- Water Environment and Water Services (Scotland) Act 2003 ('WEWS Act').

1.1.2 Under the Nature Conservation (Scotland) Act 2004, public bodies in Scotland have a duty to further the conservation of biodiversity. The Scottish Biodiversity List (SBL)² is a list of habitats, plants, and animals that Scottish Ministers consider to be of principal importance for biodiversity conservation in Scotland. The purpose of the SBL is to identify habitats and species that are of highest priority for biodiversity conservation, thereby helping public bodies to carry out their Biodiversity Duty.

¹ EU legislation which applied directly or indirectly to the UK before 11.00 p.m. on 31 December 2020 has been retained in UK law as a form of domestic legislation known as 'retained EU legislation'. The Habitats Regulations have been amended by The Conservation (Natural Habitats, &c.) (EU Exit) (Scotland) (Amendment) Regulations 2019, so that they continue to operate effectively. Most of these changes involve transferring functions from the European Commission to the appropriate national authorities. All other processes or terms in the Habitats Regulations remain unchanged and existing guidance is still relevant.

² NatureScot (2020). Scottish Biodiversity List. (online) Available at: <https://www.nature.scot/doc/scottish-biodiversity-list> [Accessed: July 2024]

2. PLANNING POLICY

2.1.1 Detailed information on relevant planning policy can be found in the Planning Statement which has been submitted as part of the Section 37 application for the Proposed Development. However, a brief summary of national and local planning policy relevant to conservation is given under the following sub-headings:

2.2 National Planning Policy

2.2.1 National Planning Framework 4 (NPF4) includes the following statements of policy intent: “To protect, restore and enhance natural assets making best use of nature-based solutions” and “To protect biodiversity, reverse biodiversity loss, deliver positive effects from development and strengthen nature networks”. Wherever possible and proportionate to the scale and nature of the project, the Proposed Development has therefore sought to deliver benefits for biodiversity, in addition to protecting existing biodiversity. NPF4 also states that major development will only be supported where nature networks “are in a demonstrably better state than without intervention” using best practice and including future monitoring and management where appropriate.

2.2.2 Prior to the UK’s exit from the European Union (EU), Scotland’s Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) were part of a wider European network of such sites known as the ‘Natura 2000 network’. They were consequently referred to as ‘European sites’. Now that the UK has left the EU, Scotland’s SACs and SPAs are no longer part of the Natura 2000 network, but form part of a UK-wide network of designated sites referred to as the ‘UK site network’. However, it is current Scottish Government policy to retain the term ‘European site’ to refer collectively to SACs and SPAs (Scottish Government, 2020)³. Note that relevant SPAs and their qualifying features are discussed in Chapter 9: ‘Ornithology’ (Volume 2).

2.3 Local Planning Policy

2.3.1 The Proposed Development lies within three local planning authority areas: Angus in the far north-east, Perth and Kinross in the west, and Fife in the south-east. Relevant local planning policies for each are detailed below.

2.3.2 Local planning policies for the Perth and Kinross Council (PKC) area are detailed in the Perth and Kinross Local Development Plan 2 (LDP2)⁴, adopted November 2019. Additional advice is provided in Supplementary Guidance: Forest and Woodland Strategy, Supplementary Guidance: Green and Blue Infrastructure, Planning Guidance: Planning and Biodiversity. Policies of Perth and Kinross LDP2 relevant to nature conservation are summarised in Table A8.1- 1, below.

Table A8.1- 1 Summary of Relevant Policies Within Perth and Kinross LDP2

Planning policy	Relevant purpose
Policy 38: Environment and conservation	Sets out standard legal requirements for protected sites and levels of justification for permitting developments affecting them (the stringency dependent on the nature of the designation), and requirements for mitigation.
Policy 40: Forestry, Woodland and Trees	States that PKC will support proposals which expand / retain woodland in line with Perth and Kinross Forest and Woodland Strategy Supplementary Guidance. In particular, this guidance seeks to enhance habitat connectivity, conserve and expand riparian woodland, identify trees and woodland where nature conservation is of primary importance and to apply the guidance and advice in the Scottish Government’s Control of Woodland Removal Policy when considering proposals for tree removal.

³ Scottish Government (2020). EU Exit: The Habitats Regulations in Scotland. December 2020. (online) Available at: <https://www.gov.scot/publications/eu-exit-habitats-regulations-scotland-2/>. [Accessed: July 2024]

⁴ Perth and Kinross Council (2019). Perth and Kinross Local Development Plan 2. (online) Available at: https://www.pkc.gov.uk/media/45242/Adopted-Local-Development-Plan-2019/pdf/LDP_2_2019_Adopted_Interactive.pdf?m=637122639435770000 [Accessed: July 2024]

Planning policy	Relevant purpose
Policy 41: Biodiversity	PKC will seek to protect and enhance all wildlife and wildlife habitats, whether formally designated / protected or not, taking into account the ecosystems and natural processes in the area and will take account of national and European legislation and the Tayside Local Biodiversity Action Plan when making planning decisions, particularly those that may affect protected species. This is expanded upon in Planning Guidance: Planning and Biodiversity.
Policy 42: Green Infrastructure	PKC will require all new development to contribute to green infrastructure by avoiding the fragmentation of existing networks, and by the protection of existing species and habitats and creation of new habitats and wildlife corridors such as hedgerows where appropriate. The Supplementary Guidance: Green and Blue Infrastructure gives further advice.
Policy 47: River Tay Catchment Area	PKC will seek to protect and enhance the nature conservation interests within the River Tay catchment area. This includes ensuring no adverse effects on the River Tay SAC.
Policy 51: Soils	PKC is committed to ensuring that development avoids disturbance to, and the loss of, carbon rich soils, including peatland, which are of value as carbon stores. Development will only be permitted on areas of carbon-rich soils, including peatland, where it has been clearly demonstrated that there is no viable alternative, or where the economic and social benefits of the development would outweigh any potential detrimental effect on the environment. Reference should be made to the Carbon and Peatland Maps available on the Scottish Soils website, however the presence of any carbon rich soils, including peatland, will be required to be validated through the undertaking of appropriate field surveys.

2.3.3 Local planning policies for the Angus Council (AC) area are detailed in the Angus Local Development Plan (LDP)⁵. Policies of the Angus LDP relevant to nature conservation are summarised in Table A8.1- 2, below.

Table A8.1- 2 Summary of Relevant Policies Within Angus LDP

Planning policy	Relevant purpose
Policy PV1: Green Networks and Green Infrastructure	AC will seek to protect, enhance and extend the wildlife value of the Green Network. Proposals that are likely to erode or have a damaging effect on the connectivity and functionality of the Green Network will not be permitted unless appropriate mitigation or replacement can be secured. In some cases a developer contribution towards enhancement of the wider Green Network may be appropriate.
Policy PV4: Sites Designated for Natural Heritage and Biodiversity Value	Sets out standard legal requirements for protected sites and levels of justification for permitting developments affecting them (the stringency dependent on the nature of the designation), and requirements for mitigation. AC will also seek to enhance the nature conservation interests within the area.
Policy PV5: Protected Species	Sets out standard legal requirements for protected species and levels of justification for permitting developments affecting them (the stringency dependent on the applicable legislation), and requirements for mitigation. AC will also seek to protect and enhance all wildlife including habitats and important roosts / nesting places.

⁵ Angus Council (2016). Angus Local Development Plan. (online) Available at: <https://www.angus.gov.uk/sites/default/files/Angus%20local%20development%20plan%20adopted%20September%202016.pdf> [Accessed: July 2024]

Planning policy	Relevant purpose
Policy PV7: Woodland, Trees and Hedges	<p>States that ancient semi-natural woodland will be protected as a resource of irreplaceable value. Woodland, trees and hedges which contribute to the nature conservation value of the area will be protected and enhanced.</p> <p>Proposals should protect and retain existing woodland, trees and hedges, avoid fragmentation of existing provision and ensure new planting enhances biodiversity and connectivity.</p> <p>AC will follow Scottish Government's Control of Woodland Removal Policy when considering proposals for tree removal.</p>
Policy PV20: Soils and Geodiversity	<p>Development proposals affecting deep peat or carbon rich soils will not be allowed unless there is an overwhelming social or economic need that cannot be met elsewhere. Where peat and carbon rich soils are present, applicants should assess the likely effects of development proposals on carbon dioxide emissions.</p>

2.3.4 Local planning policies for the Fife Council area are detailed in the FIFEplan⁶, adopted September 2017. Additional advice is provided in Supplementary Guidance: Site Appraisal Information – Natural heritage and biodiversity⁷. The FIFEplan has a single all-encompassing policy relevant to nature conservation – Policy 13: Natural Environment and Access.

2.3.5 This policy states that development proposals will only be supported where they protect or enhance natural heritage and access assets including:

- designated sites of international and national importance, including European sites and Sites of Special Scientific Interest;
- designated sites of local importance, including Local Wildlife Sites;
- woodlands, trees and hedgerows that have a nature conservation value;
- biodiversity in the wider environment;
- protected and priority habitats and species;
- carbon rich soils (including peat); and
- green networks and greenspaces.

⁶ Fife Council (2017). FIFEplan. (online) Available at: <https://fife-consult.objective.co.uk/kse/event/30240/section/4395822> [Accessed: July 2024]

⁷ Fife Council. Making Fifes Places Supplementary Guidance. (online) Available at: https://www.fife.gov.uk/__data/assets/pdf_file/0021/162318/Making-Fifes-Places-Supplementary-Guidance-Appendices-A-F.pdf [Accessed: July 2024]