

## Kennedy C (Christopher)

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**From:** susan@livinglaw.co.uk  
**Sent:** 03 February 2022 12:55  
**To:** 'Smith, Kirsty'; Kennedy C (Christopher)  
**Subject:** WH Inquiry Documents with corrected CD numbering annotated  
**Attachments:** CD 13.3.1 - 818960 - Updated with correct CD references 03-02-22.pdf; CD 13.4 818948 - Updated with correct CD references 03-02-22.pdf; CD13.13 818978 - Updated with correct CD references 03-02-22.pdf; CD 13.1 818946 - Updated with correct CD references 03-02-22.pdf; CD 13.2 818947 - Updated with correct CD references 03-02-22.pdf

Good afternoon, Christopher –

*(copy to Kirsty)*

I hope this email finds you well.

Following completion of the Core Documents List, I thought it may be beneficial to the Reporter/Parties to be provided with updated copies of our principal inquiry documents etc noting the correct CD numbering throughout, where now allocated. At the same time as dealing with this administrative tidy-up, we have addressed the pagination issue being otherwise dealt with by Kirsty so as to ensure consistency of page numbering between parties' documents. I hope this is helpful with a view to minimising double-handling. (You will note that the electronic page numbering is now shown in the bottom right in blue text for ease of differentiation).

In addition, the Reporter had raised a query in connection with WH Hearing Statement on Policy matters via email dated 25/01. I confirm that the reference referred to is indeed a typo that worked into a late version. The error is marked in red strike through here for clarity purposes to avoid confusion. Please convey my apologies for the short delay in responding on that due to a COVID related personal matter.

I confirm for your file that aside from this, there are no changes other than addressing these administrative matters to tidy up CD cross-referencing. We hope this is, however, helpful for completeness and clarity purposes.

Kind regards,

Susan

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**ELECTRICITY ACT 1989**

**Public Local Inquiry**

**Statement on Scope of Technical Matters**

*on behalf of Wildcat Haven C.I.C*

**Re: Inquiry Session on Ecology**

**The Scottish Wildcat (*Felis silvestris*)**

*in connection with*

**Application by Vattenfall Windpower Limited for section 36 consent and deemed planning permission: Clashindarroch II Windfarm, Aberdeenshire**

**DPEA Reference: WIN-110-2**

17 December 2021

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## Introduction

1. On 23 December 2019, Vattenfall Windpower Limited (hereafter, “**the Applicant**”) submitted an application (the “**Application**”) under section 36 of the Electricity Act 1989 to the Scottish Ministers for consent and deemed planning permission to construct and operate the proposed Clashindarroch II Windfarm located by Huntly (AB54) (the “**Proposed Development**”) (CD 1.01 to CD 1.22). The Proposed Development is for a windfarm comprising 14 turbines of up to 180m height from ground to blade tip, with an overall generating capacity of circa 77MW together with associated infrastructure.

2. A Reporter (Elsbeth Cook) has been appointed by Scottish Ministers by way of Minute of Appointment dated 23 June 2021 to consider the Application and report to them with her findings and recommendations, prior to their decision thereon.
3. At PEM procedural meeting No.2, held on 8 December 2021, it was determined by the Reporter that Wildcat Haven should bring forward a statement of the technical matters and case for the planned inquiry session on Ecology scheduled to be held on 02 March 2022 and in advance of full inquiry statements/reports otherwise due to be presented by 17 January 2022.
4. The purpose of this procedure is to “*provide further detail on the scope of the technical matters for Inquiry Session 2*”. This Statement sets out the framework of the case to be presented for and on behalf of Wildcat Haven C.I.C at the planned inquiry technical session on ecology matters and Wildcat Haven’s technical EIA concerns in respect of the Clashindarroch II windfarm development. It proceeds from the basis of information disclosed by the Applicant to date whilst noting that full disclosure from the Applicant has yet to be achieved whilst discussions regarding identified information gaps are continuing between the parties in advance of full inquiry statements/reports.
5. This document has been prepared by Living Law on behalf of Wildcat Haven. Its purpose is solely to provide advance disclosure so as to facilitate preparations at this juncture by the Applicant for the planned technical session – which has as its scope “*the methodology and data used to predict impacts / effects on the wildcat population*” (as directed by Procedure Note #1 and #2). It will be supplemented by the full Inquiry Statement/Reports and Precognitions of Wildcat Haven and its two witnesses in accordance with the otherwise planned inquiry timetable, in due course. It should be read alongside Wildcat Haven’s other inquiry submissions; **in particular, its legal submissions** (“FWS #1) and preliminary issues raised therein.
6. In its legal submissions, WH has submitted that:-
  - **Further Environmental Information** is required from the Applicant so as to:-
    - a) ensure due assessment and scrutiny of cumulative effects of this development together with Clashindarroch I; in particular, as regards base-line scenario/effects.
    - b) address **the lack of substantive supporting evidence** before this inquiry from the Applicant in support of the predictions it puts forward of the anticipated effects of *the proposed development* on the Scottish wildcat species in light in particular of the significant literature gap and knowledge vacuum on the impacts of wind developments on the Scottish wildcat generally (e.g. as compared with other species). Third party (SWA) data within has been re-purposed by the Applicant for the EIA process but for the reasons that will be explained, this is not designed for and is inadequate for EIA assessment purposes. To the extent that Wildcat Haven may present certain of its own data to the inquiry in due course, this cannot and will not address the fact that these material deficiencies in the Applicant’s ES are not for inquiry third parties to remedy.
  - **Procedural Concerns relating to the inappropriate use of Confidential Annexes** – which fail to conform to SNH/NatureScot Guidelines and have illegitimately (over)-suppressed/redacted critical environmental information presented within the Environmental

Statement/Report thereby preventing due public scrutiny and participatory engagement with the consenting procedure and interrogation of its anticipated environmental effects. This has included withholding of information on commercial confidentiality/ownership grounds (which is specifically contrary to the said guidelines and are required to be separately protectively marked). The EIA 2017 Regulations transpose these requirements in Scotland. Clashindarroch II is a development which specifically falls within the terms of Article 6 of, and Annex I to, the UNECE Aarhus Convention which provides the procedural right for the public concerned to access and to participate in permitting decisions for such development proposals. These issues have relevance beyond the immediate inquiry parties here and render any consent subject to challenge.

### Overview of Wildcat Haven's Position on EIA Matters

- **The Scottish wildcat is the most important ecological receptor to be considered in the EIA for Clashindarroch II.** This fact is beyond argument and we anticipate must be accepted by the Applicant given the wildcat's parlous conservation status, low national population and its known extreme sensitivity to factors such as habitat loss and disturbance.
- The data collected by Scottish Wildcat Action and relied upon by Vattenfall in lieu of adequate EIA studies of their own clearly demonstrates that the Clashindarroch contains a very high-density population of Scottish wildcats representing the single most important population nucleus currently known in existence.
- The frequency and consistency of sightings is exceptional.
- The likely impacts of the Proposed Development as far as the Scottish wildcat species is concerned include:-
  - ❖ *habitat loss;*
  - ❖ *increased species' disturbance;*
  - ❖ *increased introgression;*
  - ❖ *disruption of social structure;*
  - ❖ *increased dispersal (with associated anticipated increases in mortality);*
  - ❖ *reduction in the breeding potential of the species;*
  - ❖ *increased risk of local extinction.*
- On any rational measure, these impacts are measurable at the national level of significance.
- As Clashindarroch is the most significant known wild population of Scottish wildcat, and the development risks a catastrophic level of impact to that population, the risks involved include precipitation or acceleration of the extinction of the Scottish wildcat in the wild.

## Background/Preliminary Issues

7. Wildcat Haven has objected to the proposed windfarm on the basis that it will have a **significant adverse effect on the population of the critically endangered Scottish wildcat present at the development site and its environs**. This outcome cannot be discounted based on the information presently before this inquiry and Wildcat Haven has submitted that due to inherent flaws in the EIAR, **no confidence** can be placed in the Applicant's conclusions within the EIAR with regards to anticipated wildcat impacts. The basic premise of that assertion is detailed later in this document.
8. Wildcat Haven's position remains that the anticipated Scottish wildcat impacts are a matter which cannot be overcome via planning conditions and reactive mitigation. Rather, it is a fundamental **material consideration** in the decision as to whether or not to grant consent such as to mandate it be recommended for refusal (or, as a minimum, FEI required) in accordance with the legal and policy framework as outlined in its Letter of Objection (CD 2.2) and FWS N#1 (CD 15.6).
9. In the absence of FEI addressing these concerns, Wildcat Haven submits that an inquiry session to interrogate the methodology and data interpretation relied upon by the Applicant is essential to a robust determination unless refusal of the scheme is in any event intended.

## Content/Scope of Statement

10. As requested by the Reporter, this procedure provides:-
  - i) an **outline** of Wildcat Haven's case relating to ecology matters and the impacts of the proposed development on the Scottish wildcat (*Felis silvestris*);
  - ii) confirmation of the Witnesses that Wildcat Haven intends to call at the inquiry session and lead in evidence; and
  - iii) a ***draft*** list of the documents to which Wildcat Haven intends to refer to in evidence during the inquiry session.

## Relevant Chronology and Standing of Wildcat Haven

11. Wildcat Haven has the right to participate in these inquiry proceedings as guaranteed by the UNECE Aarhus Convention as a conservation organisation and representation of civil society concerns relating to the Scottish wildcat.
12. Its objection to the scheme at inquiry proceeds against the background of attending a formal meeting with the Applicant on 29 January 2020 (CD6.16) to raise its concerns regarding the Proposed Development and its impacts on the Scottish wildcat, with the Application being lodged in the period between request for that meeting and the meeting itself taking place. Concerns

regarding the potential significant adverse impacts of this proposed development on the Scottish wildcat have been documented by Wildcat Haven since at least early 2017. It was indicated during the January 2020 meeting that a formal objection to the scheme would require to proceed if the wildcat considerations were not considered fully, engaged with, and addressed by the Applicant.

13. A complaint was subsequently made by Wildcat Haven to the Bern Convention Secretariat on 09 April 2020. The UK Government and Devolved Agencies responded in submission to the Secretariat (CD 15.7.4) that this consenting determination now underway was the appropriate place for the wildcat impacts from Clashindarroch II to be duly scrutinised and that they *would* be so considered (see FWS #1 (CD 16.5)). (CD15.6)
14. Wildcat Haven, therefore, seeks to bring its **specialist technical expertise and practical experience** of wildcat conservation to bear at the planned technical inquiry session relative to the strict legal protections applicable to this species (as well as international biodiversity commitments generally) and how they apply as to the current development context at Clashindarroch II within the planned session addressing:-

***“the methodology and data used to predict impacts / effects on the wildcat population”***

15. In presenting its case, Wildcat Haven is conscious of the weight to be attached in planning decisions generally to applicants and the statutory conservation agencies whilst noting that the Scottish Wildcat is a highly specialist conservation matter. Wildcat Haven will aim, therefore, in oral sessions to avoid duplication and repetition of matters already dealt with adequately elsewhere (including, those matters addressed already by way of written submissions) whilst recognising the Ministerial responsibilities and duties in the determination to duly safeguard the wildcat and why the EIA information before them is deficient and inadequate as far as predicting the impacts / effects on the wildcat population.
16. Wildcat Haven has adopted a consistent position throughout that the Proposed Development is likely to have adverse effects of national significance on the Scottish wildcat at Clashindarroch and that there are fundamental flaws in the Applicant’s approach which cannot simply be glossed and patched over through the inquiry procedure ongoing.
17. Further information on Wildcat Haven as a conservation organisation is provided for reference at Annex 1.

### **Planned Scope of Technical Case for Ecology Inquiry Session (Scottish Wildcat)**

18. For the purposes of the ecology inquiry session (to which this procedure relates), Wildcat Haven plans to focus in its evidence wholly on the Scottish wildcat. It relies on written submissions as regards the consideration of impacts on other species present at the site.

19. For the inquiry session it will rely on:-

- 📄 information released very recently (November 2021) by the Applicant (**CD1.23 - 5**) comprising redacted versions of the technical Confidential Annexes (**CD1.6**) and imparting general (non-specific) locational information about the species' presence (in fact);
- 📄 witness testimonial relating to its own fieldwork, which has further confirmed the species' presence at the development site and its environs (which will be particularised in its witness statements/precognitions);
- 📄 the EIAR for the Scheme, as presented (**CD1.3 – 1.9**);
- 📄 wildcat scientific and EIA literature (see, **Annex 1** hereto).

20. The Clashindarroch forest is a plantation forest; however, felling operates on a rotational basis in accordance with FSC standards at present over extended temporal periods. Wildcat Haven will demonstrate in evidence that the accelerated pace and scale of forestry clearance and construction works associated with the planned development (at both pre-and-post construction phases) will have a highly detrimental impact on the wildcat population as compared to the existing site usage and that this has not been adequately considered in the EIAR.

21. We submit that amongst the key issues which require answers from the Applicant in their Inquiry evidence include:-

- Why no specialist Wildcat expertise was procured by the Applicant in the preparation of its EIAR given the national significance of this issue.
- Why, in lieu of adequate data from the Applicant's own EIA studies (as a consequence of the above), third party data, much of it SWA data from survey effort outside the Application Site, has been re-purposed and incorporated into the EIAR for reliance purposes when such data is not designed nor intended for EIA purposes.
- Why this data was not disclosed earlier in the application proceedings;
- Why additional data relied upon in the ES and referred to as 'unpublished' or 'not yet processed' has not been made available via the FEI process;
- Why no post-construction monitoring (PCM) data has been produced relative to Clashindarroch I;
- Why the cumulative impacts of the proposed development with Clashindarroch I have not properly been taken into consideration within the EIAR.
- Why the Applicant has not followed its own methodology and procedures in the course of producing the EIAR;
- Why the Applicant has deviated from accepted standards and industry guidance in producing its EIAR.



22. Wildcat Haven will also participate in the planned Hearing on Conditions and Policy (for which inquiry documents are sought according to the normal timetable). These are, therefore, out-with the scope of this procedural submission.

### Wildcat Haven's Technical Evidence to Inquiry (Overview)

23. Wildcat Haven's case at inquiry proceeds from the following stance:-

- i) The population of the Scottish wildcat centred on the Clashindarroch is the most important population for the Scottish wildcat in Scotland;
- ii) The Clashindarroch II Development is within the Strathbogie Wildcat Priority Area indicating the relative importance of the species' presence at the development site (and its environs);
- iii) The Scottish wildcat is critically endangered, on the brink of extinction, and highly sensitive to a range of impacts (including, habitat loss, disturbance and the effects of disruption of ecological stasis on breeding success and exposure to hybridisation vectors);
- iv) The starting point for assessment of impacts against such a sensitive and important receptor is one of avoidance and this has not been engaged with by the Applicant in its EIAR/methodology;
- v) Clashindarroch II is manifestly not a suitable site for a windfarm development in view of the acute risk of impact on critical Scottish wildcat presence at the development site (and its environs) particularly in view of the dearth of literature on the impacts of wind energy on wildcats and the huge margins of uncertainty this brings;
- vi) The Clashindarroch II Development is not analogous in its impacts on the Scottish wildcat with existing site use (including forestry operations);
- vii) Due to failures of due diligence by the Applicant (both pre- and post-construction) the Clashindarroch I wind farm provides no assurances or indeed any useful data to address the problems with uncertainty about wildcat/wind farm interactions. On any reasoned analysis, however, the Clashindarroch I site is less suitable for wildcat than it was pre-construction.
- viii) The proposed development is not one of overriding national interest (LDP Policy E4);
- ix) Notwithstanding proposed conditions by statutory agencies (NatureScot/Aberdeenshire Council), there is no mitigation that can safeguard the wildcat presence within the Application Site and the proposed development thus poses an unacceptable risk to the Clashindarroch population.

**Based on the data provided, the legislative and regulatory framework, Wildcat Haven and its experts advocate this application must be refused.**

24. At inquiry, Wildcat Haven will demonstrate:-

- i) The behavioural characteristics of the Scottish Wildcat species and its particular and elevated sensitivity to impacts from disturbance and habitat disruption compared with other species. This is not recognised in the EIAR / methodology;
- ii) That the EIAR is technically deficient in its approach to risk, information gaps and certainty where addressing the baseline Scottish wildcat presence (as detailed hereafter).
- iii) The methodology deployed in the EIAR is deficient by reference to industry standards and guidance and the EIAR is subject to inconsistencies of approach and contradictory or irrational reasoning in arriving at its conclusions (as detailed hereafter);
- iv) No confidence can be placed on the experience and legacy of the Clashindarroch I windfarm in respect of species' impacts. Indeed, the failures in base-line assessments and in post-construction monitoring there further elevate concerns (as detailed hereafter).

### Wildcat Haven's Witnesses and Representation and Structure of Evidence

25. The evidence to be led on behalf of Wildcat Haven will consist of written and oral evidence via a number of documentary productions and the evidence of two expert witnesses. Wildcat Haven intends to present evidence at inquiry from:-

- ☞ Dr Paul O'Donoghue – Wildcat Expert.
- ☞ Mr Dominic Woodfield – Ecologist and EIA Expert.

Abbreviated Curriculum vitae for the two expert witnesses anticipated to be called on behalf of the organisation are provided at **Annex 2**.

26. Wildcat Haven estimates that its evidence in relation to the proposed impacts on the Scottish Wildcat will fit within the allocated timetable (including allowance for cross-examination). Wildcat Haven reserves the right to substitute and/or supplement witnesses.

27. Wildcat Haven will be represented at Inquiry by Ms Susan D. Shaw, Partner (Solicitor), Living Law and Counsel (as required).

### Wildcat Species Expert Witness – Dr O'Donoghue

28. Dr O'Donoghue will focus in evidence on the significance of the Clashindarroch forest for the critically endangered Scottish wildcat population as *the most important population nucleus* known at present in Scotland. This will provide important grounding for the technical EIA matters addressed by Wildcat Haven's second witness, Mr Woodfield.

29. Dr O'Donoghue will provide an:-

- ☞ Appraisal of the technical EIA data collected by Scottish Wildcat Action within the Confidential Annexes which demonstrably confirms now that the Clashindarroch contains a very high-density population of Scottish Wildcat (up to 21 individuals) and why this density is of significance nationally and mandates being afforded maximum protection as per the legal protection framework for the species.
- ☞ The high (exceptional) and consistency (frequency) of sightings at the Clashindarroch II site and environs generally, and as further evidenced also by Wildcat Haven's fieldwork.
- ☞ Appraisal of the data which suggests five (5) – six (6) territories will be disrupted and/or destroyed by the planned scheme if it proceeds.

30. Evidence will be structured around four specific themes and areas of concern as regards wildcat impacts:

- i) the disturbance, displacement, dispersal and other anticipated wildcat behavioural responses and risks associated with the Proposed Development;
  - ii) impacts to territorial and social structure (and associated population-level risks);
  - iii) elevated susceptibility of Wildcat to such risks;
  - iv) assessment of the differential to the Base-Line ('Do Nothing') Scenario.
- i) *Disturbance, Displacement, Dispersal and Other Anticipated Behavioural Responses:*
- ☞ Interpretation of available data as regards distribution within Clashindarroch forest and development site having regard to relative homogeneity of habitat present;
  - ☞ Assumptions with regards to territorial and social structure (females occupying territories and males overlapping these territories).
  - ☞ The anticipated risks of species displacement/dispersal from both construction and operational phases pushing species to surrounding estates etc which increases persecution risks (e.g. game-keeping, traps, poisoning) and risks from other human-induced factors (e.g. vehicular presence and associated increased mortality risks).
  - ☞ That dispersal will risk forcing wildcats from the Clashindarroch to cross human-dominated landscapes and into surrounding farmland, thereby increasing risks of exposure to disease, feline aids and introgression (hybridisation) contrary to conservation practice.
  - ☞ Why these risks have been insufficiently assessed or not assessed at all.

31. The manner in which industrialisation of the site will exacerbate the displacement and disruption risks and why this is considered differential to existing forestry management operations at the site.
32. As a high-density population, why the removal of habitat and expansion of unsuitable habitat (which will have correspondingly low occupancy) will lead to increased competition for remaining habitat thereby increasing territorial aggression, reducing breeding output and increasing dispersal.

ii) Territorial and Social Structure Risks:

- ☞ Risks of disruption to social and territorial structures of the wildcat population caused by the Proposed Development given the relatively complex social structures which the wildcat species lives within.
- ☞ Territorial Structure: wildcat females and males occupy overlapping territories. Males form hierarchies and disturbance caused to these will impact on access to mating opportunities. In short, this means that the disturbance and displacement caused by the development poses knock on effects for the whole population (in addition to immediately anticipated losses of territories, disturbance and displacement risks).
- ☞ Fecundity and Breeding Output: detrimental impacts that the Proposed Development risks to fecundity and breeding output for the species and thus negative effects on this critical breeding population overall. *(Note: this is a founding basis for the level of strict protection which the species and its habitat – den, breeding and resting sites – are afforded in law).*
- ☞ Prospect for increased territorial disputes which will be caused by removing and disrupting important habitat due to the high-density population presence.
- ☞ Why these risks have been insufficiently assessed or not assessed at all;
- ☞ Detrimental impacts of the planned infrastructure:
  - a) During construction phases:
    - i) due to nature/scale of site clearance works, access tracks, cable-lines, noise, light pollution which will lead to habitat fragmentation and disturbance;
    - ii) increased human presence (e.g. from the on-site accommodation planned and workers etc) and, again, why this is manifestly different to the base-line of existing forestry operations; and
    - iii) increased impacts for the wildcat species (hybridisation and elevated susceptibility to disturbance risking physiological stress and cortisol level increases).

b) Post-construction phase:-

- i) anticipated consequences of habitat fragmentation and destruction (in terms of preventing movement, isolating individuals and increasing edge effects);
- ii) detrimental and unknown impacts of infrastructure during post-construction phases (such as due to access roads, cabling, site infrastructure);
- iii) The paucity of published or unpublished information about wildcat/windfarm interactions, the effect of this on scientific certainty and the absence of information from post-construction monitoring of Clashindarroch I.

- ☞ The significantly elevated nature of risks during vulnerable periods i.e. wildcat breeding season (Jan – March) and rearing season (i.e. 6 months post April/May to late October).

iii) Elevated Susceptibility of Wildcat Species to such risks:

- ☞ Evidence that where wildcats are concerned human disturbance and habitat loss leads to an **increase in introgression and local extinction of wildcat populations.**

- a) steps required to minimise introgression explicitly include protection of habitat against net deforestation, fragmentation and disturbance (all factors associated with the planned scheme). Whereas, high population densities require to be protected from hybridisation.
- b) local population extinction risks – that small populations are already prone to random stochastic events which mean that even small perturbations can have disproportionately large impacts. This applies to Clashindarroch II where a small population will be exposed to environmental change and simultaneously threats of hybridisation.
- c) remaining habitat becoming unviable – infrastructure associated with the development will cause disturbance and fragmentation as remaining habitat post-construction will have reduced occupancy and will compromise interconnectivity between areas with high predicted wildcat occupancy. Thus, it is not simply the total area of forest removed but the total area of forest impacted by the infrastructure and human presence which requires to be assessed. The Applicant's EIAR has failed to do so.

- ☞ explanation of scientific literature which demonstrates across the species range that disturbance and fragmentation, such as is associated with Clashindarroch II, can lead to reduced occupancy rates in the fragmented habitat patches that remain.

iv) Assessment of the Differential and Impacts when compared with Base-Line ('Do Nothing') Scenario

- ☞ The gaps and deficiencies in assessment of these matters in the EIAR.

- ☞ Why in Wildcat Haven's experience these impacts have been consistently underplayed and not engaged with seriously by the Applicant.
- ☞ Best-practice conservation measures which recommend disturbance free zones in integral zones (which are analogous to the Clashindarroch site) and which mandate that this windfarm proposal should be refused.

## Ecology EIA Expert Witness – Mr Woodfield

33. Mr Woodfield's evidence is planned to be focussed and structured around the technical EIA and methodology of the Applicant and why it fails to conform to the applicable CIEEM industry guidelines 2018 (CD 6.19 ) and other relevant industry guidance, including the British Standard (CD 6.30 ).

34. His evidence will specifically be structured around four specific / focal areas of concern:-

- i) Lack of diligence and rigour of assessment given species characteristics (as presented by Witness 1, but avoiding replication/duplication);
- ii) The gaps in base-line information and why the methodology deployed by the Applicant fails to conform to industry guidelines, is not complied with by the Applicant in any event, why the baseline is data deficient; and, why there is inadequate certainty that highly significant impacts on a nationally important receptor will be avoided, mitigated or compensated to a level required by policy and law.
- iii) Clashindarroch I site history and inadequate PCM;
- iv) Why the mitigation proposed is inadequate to address the full suite of population-level impacts raised by Witness 1.

### i) Lack of diligence and rigour of assessment given species characteristics

- Despite its parlous status, the standard of information gathered by the EIA consultants for this receptor is poorer than for practically any of the other taxa at potential risk of harm from the proposals.
- Huge measures of uncertainty exist and this is not fully acknowledged in the EIAR (as would be expected).
- It is not a point of dispute that wildcat is a highly challenging species to survey, but this does not, of itself, justify reduced effort being expended *by the Applicant* in trying to understand and characterise the baseline position as accurately as possible.
- This is no more than consistent with the demands for maximum possible certainty as set out in EIA guidance and relevant EIA case law (especially where regarding European Protected Species and the application of the precautionary principle within that context).

*“The evaluation of significant effects should always be based on the best available scientific evidence. If sufficient information is not available **further survey** or **additional research** may be required. In cases of reasonable doubt, where it is not possible to robustly justify a conclusion of no significant effect, a significant effect **should be assumed**. Where uncertainty exists, it **must** be acknowledged in the EclA.”* (CIEEM 2018, para 5.35) (emphasis added).

ii) The gaps in base-line information and why the methodology deployed by the Applicant fails to conform to industry guidelines and are data deficient (reliance on SWA data)

- MBEC Studies:- in respect of the Proposed Development, it has to be a matter of concern that the specific EIA surveys carried out by MBEC failed to find any conclusive evidence of the species, despite its known presence at relatively high density.
- Instead, heavy reliance is placed on third-party data (from Scottish Wildcat Action); however, this data was not collected specifically to inform the impact assessment. Indeed, much of it relates to parts of Clashindarroch Forest to the south and well removed from the application site.
- Wildcat Haven contends that this does not meet the standards alluded to in the EclA guidelines. Nor is the sheer magnitude of uncertainty delivered by the accumulated baseline information in the ES properly acknowledged in the ES. This is both a substantive concern as well as a procedural one (in terms of the due understanding and scrutiny of the conclusions with the ES by those entitled to participate in this consenting determination procedure).
- There can be no dispute that where one is dealing with a nationally important population of a critically endangered mammal, the requirements of the precautionary principle and the guidance set out above bite with additional force.

iii) Clashindarroch I Site History and Post-Construction Monitoring (PCM) Concerns

- The deficiencies of the EIA are rendered more acute by the Applicant’s track record in pre-construction assessment, monitoring and aftercare with the Clashindarroch I wind farm. At that site, a similarly deficient data return was obtained from baseline surveys for the EIA and on that occasion there was scant third party data available to try and fill the knowledge vacuum. In consequence, Clashindarroch I was consented, and built, on the basis of a level of understanding about the wildcat population in Clashindarroch Forest that is now shown to have been demonstrably inadequate.
- This EIAR regrettably demonstrates that no lessons have been learnt – whilst there is some recognition by the Applicant that understanding of wildcat presence in the Forest has changed utterly since the studies for Clashindarroch I (e.g. at ES 9.327) this does not divert the ES authors from attempting to allude elsewhere that the data vacuum for both the pre-construction position as regards Clashindarroch, the construction phase impacts and the long-term effects post-construction and through operation to date is evidence that Clashindarroch I, did not impact on the local wildcat population (see e.g. ES 9.282 and 9.331). This is untenable and no more than a blind leap of faith.

- Despite the monitoring and habitat management obligations placed on the Applicant in respect of Clashindarroch I, there is scant evidence of these having been observed at all, let alone met. In consequence, there is **no data from Clashindarroch I** sufficient to support any assertion that it had no impact on the pre-existing wildcat population in *that part of the Forest*, nor that it does not continue to displace wildcats from that area now (see suggestions re/ Site Visits).

In accordance with the Applicant's request that the deficiencies in the EIA for the current application be further particularised, a para by para (partial) critique of where Chapter 9 of the Clashindarroch EIA falls down by reference to industry standard guidelines and statute is provided (see, **Annex 5**). The critique is restricted to particularising flaws in the EIA methodology *at this stage* (i.e. as set out at paras 9.1-9.70 of the ES, Chapter 9).

It is intended that a more complete critique will follow as part of Mr Woodfield's precognition and other associated inquiry documents.

### Site Visit Request:

35. Wildcat Haven will provide in its Inquiry Report photographic evidence showing the nature and scale of the habitat impacts associated with the Clashindarroch I site. The Reporter is invited to visit the Clashindarroch I site as part of unaccompanied site visits, if not already, to see for herself how inhospitable a habitat it provides for the Scottish wildcat in comparison with other parts of the Forest, including the Clashindarroch II application site under consideration. Suggested locational points will be provided.

### Other Matters:

36. If other studies have been undertaken by the Applicant to address matters within the scope of these objections, these should be disclosed. Confirmation has been sought from the Applicant's agents previously that this is not the case and that all wildcat studies and EIR etc undertaken have been identified already (as such requests were particularised in the annex to the note of meeting of January 2020 (**CD 6.16**)). However, reference is made in the EIAR to further wildcat data made available to the Applicant and related to a number of (at that time) unpublished studies. Such data has still not been made available and the Applicant is requested to clarify the position on this.
37. For example, access is requested to the SWA dataset for 2018/19 as the ES provides at 9.118 that *"the results from the SWA 2018-19 survey have not been processed so are not available at the time of writing."*

### Conclusions:

38. The evidence that Wildcat Haven will lead will demonstrate that this development has the potential to be catastrophic for the local population of the Scottish wildcat, with the very realistic possibility that it could lead to local extinction through creating an extinction vortex. On any analysis, impacts on this population are measurable at national scale, yet the combined impacts of disturbance, increased hybridisation risk, reduction in available habitat, increased stress and reduced breeding



output have simply not been addressed by the Applicant's EIA, which instead concentrates on minimal legal compliance as a means of mitigation. The EIAR further suffers from data deficiencies, unsupported assertions, unevidenced leaps of faith and methodological flaws, as particularised above and in the appendices attached. Wildcat Haven will present an evidence-based case that the EIAR is thus rendered an unsound basis for robust decision making – which, given the acute risks to a critically endangered species threatened with imminent extinction, **clearly mandates either refusal or, at minimum, the requirement for substantive FEI to address the huge inadequacies in data, certainty and assessment protocol enshrined within the current EIAR.**

39. It is important to note that all studies referenced recommend the protection of such areas as the Clashindarroch, as being vital for Wildcat conservation.

## Annex 1: Supporting Documents for Inquiry Session

Wildcat Haven intends to refer to the documents listed below and a number of other documents already included within the Core Documents list. Wildcat Haven reserves the right at this stage to add to its list as appropriate in response to the Statements of Case and evidence lodged on behalf of other parties to the Inquiry (including also the response of NatureScot to FWS #1) and in accordance with the Core Documents timetable. We reserve the right to add additional relevant Core Documents in accordance with the full inquiry timetable.

A full reference list, document list, witness statements, maps and photographs, reports etc will be provided with Wildcat Haven's full Inquiry Report.

- CD.6.22 Meredith, A. "Wildcats." BSAVA Manual of Wildlife Casualties. BSAVA Library, 2016. 253-259.
- CD.6.23 Biró, Zs, L. Szemethy, and M. Heltai. "Home range sizes of wildcats (*Felis silvestris*) and feral domestic cats (*Felis silvestris f. catus*) in a hilly region of Hungary." Mammalian Biology 69.5 (2004): 302-310.
- CD.6.24 Senn H. V. & Ogden R. 2015. "Wildcat hybrid scoring for conservation breeding under the Scottish Wildcat Conservation Action Plan 2015". Royal Zoological Society of Scotland, 74 pp.
- CD.6.25 Piñeiro, A, et al. "Effects of tourist pressure and reproduction on physiological stress response in wildcats: management implications for species conservation." Wildlife Research 39.6 (2012): 532-539.
- CD.6.26 Nussberger, B, et al. "Monitoring introgression in European wildcats in the Swiss Jura." Conservation genetics 15.5 (2014): 1219-1230.
- CD.6.27 Tryjanowski, P., Antczak, M., Hromada, M., Kuczyński, L., & Skoracki, M. (2002). "Winter feeding ecology of male and female European wildcats *Felis silvestris* in Slovakia". Zeitschrift für Jagdwissenschaft, 48(1), 49-54.
- CD.6.28 Anile, S., Devillard, S., Ragni, B., Rovero, F., Mattucci, F., & Valvo, M. L. (2019). "Habitat fragmentation and anthropogenic factors affect wildcat *Felis silvestris silvestris* occupancy and detectability on Mt Etna". Wildlife Biology, 2019(1), 1-13.
- CD.6.29 McEwing, R., Kitchener, A.C., Holleley, C. et al. "An allelic discrimination SNP assay for distinguishing the mitochondrial lineages of European wildcats and domestic cats." Conservation Genet Resour 4, 163–165 (2012).
- CD.6.30 "Biodiversity: code of practice for planning and development" (BS 42020:2013)

## **Annex 2: Wildcat Haven C.I.C (About)**

Wildcat Haven is an independent not-for-profit community interest company established in its present form in 2014. It is an internationally recognised organisation in the protection and preservation of the iconic wildcat species with global following and outreach. Their purpose/mission is as specified in their founding documents and have amongst its objects:- education; local training; veterinary care for domestic cats to prevent/reduce hybridisation; and related campaign/social media outreach relative to the Scottish wildcat's conservation and protection.

The organisation has a facebook following of around 30,000 supporters. Their petition via the change.org platform to save the Scottish wildcat at Clashindarroch now has almost 1,000,000 following <https://www.change.org/p/scottish-government-save-the-scottish-wildcat-by-protecting-clashindarroch-forest>

The organisation is financially independent in that it does not receive donations or funding from any government or other conservation body and is therefore free from conflicts of interest with programmes such as the Captive Breeding initiative. It pursues engagement as well as litigation strategies and has an overall pro-renewable stance where such development proposals are well and sympathetically sited. Objections are only made and funds invested towards only development applications judged to be significantly detrimental to Scottish wildcat populations.

### **Annex 3: Witnesses' Abbreviated CVs / Credentials**

#### Dr Paul O'Donoghue – abbreviated CV

Dr O'Donoghue holds a Degree in Biological Sciences from The University of Oxford and a Doctorate from the University of Sheffield. He is a founder and Director of Wildcat Haven. He formerly held the only trapping licence for Scottish wildcat in Scotland from SNH (NatureScot) in 2015 (Licence number 49393). His PhD focussed on the conservation management of endangered species (including black rhino) and resulted in a front cover paper in the leading scientific journal, Nature <https://www.nature.com/articles/nature02177>. He has over 8 years' experience as a senior lecturer in Conservation Biology, genetics and animal behaviour. He has held positions as a senior lecturer at Chester University, Wiltshire College and as the Animal Operations Manager at Woburn Safari park. He was also an expert member of the IUCN Cat Classification Task Force and co-author on a scientific publication that classified every member of the Felidae. Since 2014 he has been a Director of Wildcat Haven. He is authorised by Wildcat Haven C.I.C to represent it in all matters pertaining to this public inquiry.

#### Mr Dominic Woodfield – abbreviated CV

Mr Dominic Woodfield, Managing Director of Bioscan UK Limited, a long-established and industry-leading environmental consultancy specialising in applied ecology. Mr Woodfield is a Chartered Ecologist (CEcol), Chartered Environmentalist (CEnv) and Member of the Chartered Institute of Ecology and Environment Management (MCIEEM). His clients include the renewable energy sector, major housing and commercial Applicants, the transport industry, conservation charities and litigants in environmental cases, with numerous appearances at inquiry and in court proceedings as an expert witness. His specialisms include a wide range of taxa (especially birds, protected mammals, herpetofauna and plants), planning and environmental legislation and its practical application, and conservation and management. He has provided evidence to more than 40 public inquiries, including several windfarm inquiries.

## Annex 4: Extracts from Procedural Notice #1 and #2

### PEM 1

6.2 The ecological matters referred to in the objection submitted by Wildcat Haven involve legal/regulatory issues and differences of opinion regarding the environmental effects on wild cat. The reporter has decided, as reflected in the discussions at the meeting, to treat the former by written submissions and the latter by an inquiry session. Ms Shaw suggested providing a summary of the technical matters that would form Wildcat Haven's the case at an inquiry session. This should be provided at the same time as the written submissions with the scope of the resultant inquiry session confirmed at the second PEM. The DPEA would consult NatureScot on this information. At this time the reporter does not intend to require NatureScot to attend any inquiry session bearing in mind they do not object to the development.

#### 2) The methodology and data used to predict impacts/effects on the wild cat population.

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##### 2) Ecology

**From Wildcat Haven** – an explanation of their concerns regarding the legal issues relating to the Environmental Report and associated EIA procedures and the regulatory framework that applies to protected species.

**From the applicant** – a response to these submissions

**Timescale:** The further written submissions from Wildcat Haven to be submitted by **29 October 2021** and the response from the applicant by **19 November 2021**.

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**Inquiry Topic 2:** The methodology and data used to predict impacts/effects on the wild cat population.

##### Parties and order of evidence:

1. Applicant
2. Wildcat Haven

**Inquiry dates:** **Wednesday 2 March 2022** morning session or following on immediately after any over-run from Inquiry Session 1.

##### Documents and Disclosure

An inquiry report or statement can be submitted to support a precognition. There would be no word limit but the report or statement should specify which documents are being referred to and state the name of the document author(s).

**Timescale – Submit by 17 January 2022**

Precognitions to be submitted and, in accordance with GN23 requirements, should aim to provide the summary of case. Where more than 2000 words in length a separate summary should be provided under 2000 words. It would be preferred if the precognitions could be "taken as read" on the day.

**Timescale – Submit by 14 February 2022**

A final list of core documents (co-ordinated by the Applicant) would be submitted following immediately after completion of any reports or statements. All documents listed at this stage to be submitted electronically only (Word or PDF).

**Timescale – Submit by 19 January 2022**

29 Oct 2021	Wildcat Haven	Written submission – legal and regulatory matters relating to EIA & wild cat Separate summary of the technical matters relating to the impact on wild cat (for future inquiry session)
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PEM 2

17 Dec 21	Wildcat Haven	response to the supplementary information Provide further detail on the scope of the technical matters for Inquiry Session 2
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**6.0 Inquiry Session 2 Ecology Matters (Wild cat)**

6.1 Wildcat Haven have submitted their written submissions with regard to legal and regulatory matters. Incorporated within that is a summary of the scope of the case they expect to present on the technical matters at the inquiry session. The applicant raised concerns that the summary does not offer sufficient detail to merit an inquiry session and that written submissions may be appropriate to cover both aspects of Wildcat Haven's case. Wildcat Haven advised that developing a more detailed case is dependent on access to confidential data relating to wild cat at Clashindarroch Forest. Data that the applicant holds or has access to.

6.2 The difficulties and delays in securing access to the data were explained by both parties but are not repeated in detail in this note. The main points are that the applicant is prepared to provide access to the data – or facilitate access to data held by a third party - but Wildcat Haven finds the conditions of a draft non-disclosure agreement relating to the data to be unreasonable.

6.3 During the course of these discussions the reporter confirmed the following points.

- The reporter does not have any legal authority to instruct the confidential data to be shared or to dictate the terms of a non-disclosure agreement.
- It is in both parties interests to resolve this as soon as possible.
- Additional time will be given to allow Wildcat Haven to expand on their case on the basis that a) the confidential data has been made available or b) access is only available to redacted documents. An expanded case on either basis should be submitted by 17 December 2021.

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- Once that expanded case has been received the reporter will examine whether an inquiry session remains the best method of considering Wildcat Haven's concerns.
  - Additional time is given to the applicant to respond to the written statement and any expanded inquiry case but only until the 20 December 2021.
  - The reporter will send the various exchanges on wildcat matters to NatureScot for their comments.
  - With the cooperation of both parties the reporter aims to make a decision on these procedural matters before the Christmas break.

6.4 The final choice of procedure should not be interpreted by any party as an indicator of the importance placed on the issue within the wider inquiry.

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17/12/21


--ENDS--

ES reference	Nature of problem	Description
Table 9-2	Failure to convey relevant information on wildcat status	IUCN 2019 is cited, but the population estimate that it conveys (“ <i>Today, the wildcat in Scotland is at the brink of extinction. The current population estimation ranges from 30 to 430 individuals, with a further decreasing trend.</i> ”) is not cited here despite its acute relevance to the EIA. Indeed, incorrect (higher mean) population estimate figures of 200-400 are given later in the chapter (see Table 9-12 p 9-37). The source for this different figure is not given.
9.20	List of guidance followed in preparation of the EIA fails to cite British Standard BS42020	The British Standard is directly relevant to the EIA in providing standards on certainty for decision makers. Sections 6.6 of the British Standard on ‘Providing certainty and clarity for the decision-maker’ and 6.7 on ‘Identifying limitations’ are particularly relevant and it is contended that the BS is not met with this EIA.
Table 9-3 page 9-9	SNH “Recommended that information from the operation of the existing Clashindarroch wind farm and its effects on wildcats is used to inform the EIA for this proposal”	The applicant’s response in the table is that “All available information from the EIA, pre- and post-construction monitoring of Clashindarroch wind farm has been considered in the assessment” fails to mention relevant limitations such as the fact that a) the SWA dataset shows that the Applicant’s failure to find evidence of wildcat in pre-construction studies (both at Clashindarroch I and Clashindarroch II) is more likely a function of poorer skill and effort than an accurate representation and b) there appears to have been no meaningful post-construction studies by the applicant at Clashindarroch I.
Table 9-3, page 9-9	‘Scottish Badgers’ response to scoping	As an illustration of the ‘second class’ standing of wildcat in the EIA process undertaken by the applicant, attention is drawn to the fact that there is recognition and response to the Scottish badgers recommendation that badgers can change sett sites frequently, but no equivalent response in relation to the (much rarer) Scottish wildcat.
9.30	Listing of wildcat under ‘final scope’	The implication of this paragraph is that wildcat is scoped in for consideration in the EIA process primarily due to its legal protection and not due to its critically endangered conservation status. This is a flawed approach to EIA that pervades the whole assessment and underpins the wholly flawed assumption that <i>de minimis</i> compliance with the legislation that protects den sites is sufficient to uphold the conservation of the species at this site more generally.
9.32	‘Core Study Area’ relative to Zone of Influence	Later in the ES Chapter 9, at 9.212, references are made to scientific literature indicating possible effects on wildcats from felling and construction disturbance at distances up to 900m. The decision to limit the core study area for protected species

ES reference	Nature of problem	Description
		to “the proposed wind turbine area and borrow pit locations plus a 500m wide buffer zone” is therefore questionable. Arguably, not even the entirety of the application site (within which activities might not be able to be controlled outwith the terms of the planning consent) is covered. In short, it would appear that the assessment does not adequately consider the potential or likely zone of influence of negative effects for wildcat. The concern extends to the very restricted consideration either side of the Main Access Track, despite that being proposed for localised civil engineering works).
9.38	EIA studies versus third party information	This paragraph underlines that if SWA had not been conducting camera trapping surveys in the Clashindarroch in the lead up to this submission, the Applicant would simply have had no meaningful baseline at all because its own surveys (whether due to poor expertise or poor effort) failed to provide any meaningful or robust data on wildcat use of the Application Site. The significance of this to the consenting process for Clashindarroch I is flagged again here.
9.42	Unwarranted redactions of wildcat data	While there are clear and sound reasons for withholding dense information from the public domain, the Applicant’s decision to withhold all “wildcat related data” (as it is termed in this para) is unnecessary and unjustified and has had the effect of limiting public scrutiny of the ES and the application process. BS42020 (Biodiversity) seeks to “promote transparency and consistency in the quality and appropriateness of ecological information submitted with planning applications and applications for other regulatory approvals” and the EclA Guidelines advise that “a scientifically rigorous and transparent approach to EclA is essential”.
9.45	Expertise deployed in MBEC surveys	No information is provided in the ES Chapter about the expertise of surveyors conducting the EIA-specific wildcat surveys for MBEC in terms of experience with this notoriously difficult species. It is difficult not to conclude, on the basis of the negative results they obtained as compared with the SWA dataset, that it was not sufficient.
9.46 & 9.47	Assessment methods	The precautionary methodology set out in these paragraphs is sound, and derives from the EclA guidelines, but it is not what has been applied in the impact assessment sections of the ES Chapter where the lack of a precautionary approach applied is clear, as remarked upon later in this table.
9.49	Defining receptor sensitivity	Again, the methodology cited is correct, but it simply hasn’t been followed. For example “ <i>In practice, conservation status and rarity are often the most important criteria to consider</i> ” is an entirely sound premise, but one that has not been followed



ES reference	Nature of problem	Description
		throughout where the emphasis in the impact assessment and mitigation proposals is on no more than minimal compliance with the legislation that protects den sites and individual animals. Thus the mitigation measures proposed are wholly inadequate to reduce the acknowledged significant impacts at national level.
9.50	Use of precautionary approach	The same point as above. This chapter on methodology refers to a precautionary approach but later sections of the ES Chapter indicate that instead the impact assessments are predicated on unevidenced leaps of faith in the context of a deficient baseline understanding, and on mitigation that serves merely to avoid legal transgression and will do little or nothing to uphold the conservation of the species beyond that.
Table 9-5	Incorrect approach to distinguishing sensitivity categories	The methodological approach indicated by this table is flawed because it appears to base value measures on the legal status of a site or a species. The two things are independent (as indeed appears to have been earlier recognised at para 9.49, which sets out the more correct approach). In accordance with this table, the population of Scottish wildcat at Clashindarroch would be considered of less value than it might otherwise be attributed because the site is not designated for it. This is a nonsensical approach. One of the last vestigial populations of a species on the verge of national extinction would be of national biodiversity importance regardless of whether it was subject to statutory protection or not. This is a flawed and somewhat confused approach to ecological impact assessment.
9.51	Effect characterisation (final bullet)	The confidence levels employed in the assessment are explained here. Note that in the context that the conclusion arrived at in the ES (that there will be no significant effect on perhaps the most important remain wild population of wildcat) is given a certainty of 'probable', this means that even without any further challenge to the Applicant's EIA, the Applicant's own confidence in that conclusion may be as low as 50%. Alternatively, a 50/50 chance of significant effects on perhaps the most important remaining wild population of the Scottish wildcat. The British Standard and other applicable EclA guidance demands of the EIA process that it "gives planning authorities and other regulatory bodies greater confidence in the information when they consider proposals for development or land management that potentially affect biodiversity". That threshold is not achieved.

ES reference	Nature of problem	Description
Table 9-6	Defining effect level	<p>In this table, a 'High' effect level is described as "Major effects on the feature/population, which would have a sufficient effect to alter the nature of the feature in the short-long term and affect its long-term viability. <b>For example, more than 20% habitat loss or damage</b>". By reference to Table 9-13 and para 9.158 later in ES Chapter 9, the Applicant calculates that some 154.1ha of the application site (28.22%) would be subject to habitat loss from permanent infrastructure works or "<i>felling to extend to wind-firm edges</i>" (ES para 9.158). The consequence of this form of clearance around wind farm turbines is illustrated by the photo of Clashindarroch I taken from Vattenfall's website below. This is not suitable habitat for wildcat. On the Applicant's own methodology, therefore, the impact from the windfarm should be 'High', which translates (by reference to the impact matrix at Table 9-7) to a 'Major' significant impact at 'National' level. This is in complete contradiction to the assessment at para 9.182 which states "<i>Overall, the loss/change to forest habitats resulting from the proposed felling is considered to be a Negligible effect for wildcat and Not Significant.</i>" In short, the Applicant has failed to follow its own EIA methodology and a massively suppressed impact prediction for wildcat is the result.</p> 
9.54	Approach to determination of significant effects	The methodology outlined here is not consistent with the accepted approach to EcIA as set out in the CIEEM Guidelines. In any event, the Applicant has not even adhered to its own alternative methodology as discussed in the row above.
9.55	Approach when significant effects identified	This para of the ES sets out the approach taken in response to the identification of significant effects. It describes an approach that is not compliant with established protocols, guidance and case law, which requires that alternatives (such as reducing the size of the windfarm or locating it on an alternative site entirely) be considered prior to contemplation of mitigation. In essence, the EIU methodology adopted here is again shown to be flawed as the standard avoid-mitigate-compensate approach is eschewed in favour of leapfrogging avoidance and proceeding straight to mitigation. Wildcat Haven are concerned that this is because commercial land deals related to the site may be in an

ES reference	Nature of problem	Description
		advanced stage and/or concluded. Whatever the reality, this is not a sound or legally compliant approach to EIA.
9.56	Nebulous terminology preventing scrutiny	The claim is made in this paragraph that “appreciable reduction or avoidance in potential impacts” has been achieved through the wind farm design process. In relation to ecological receptors however, and specifically wildcat for which insufficient baseline data was available on territory locations and extents, we have found no further information on this in either Chapter 2 or Chapter 5 of the ES. An ‘appreciable reduction’ is also not quantified. The veracity of this claim cannot therefore be tested and we note that in any event, using the Applicant’s own methodology, major significant impacts at national level are still the result as regards impact on wildcat.
9.61	Cumulative effects	As stated previously, the baseline data on Scottish wildcat collected for the Clashindarroch I ES, and the impact assessment based on such data is now clearly shown to have been substandard and inadequate for robust assessment. Worse, the clear opportunity provided by the construction of Clashindarroch I to properly study and report on the effects of that development on Scottish wildcat, both during construction and since, has not been taken by the Applicant, despite the clear planning and moral obligation to do so. This hampers the ability to consider the in-combination/cumulative effects of Clashindarroch I with the proposed Clashindarroch II. It also puts into an alarming context the Applicant’s allusion or outright claims that Clashindarroch I has had no negative effects on the local, nationally critical, wildcat population. Those claims are instead shown to be cavalier and disingenuous.
9.62	Limitations	This paragraph begins with the sentence “ <i>The baseline data collated to inform the assessment is considered to accurately represent the key habitats and species present and is sufficiently detailed and current to allow a realistic and reliable assessment of effects</i> ”. This statement is shown to be misplaced on the facts. Even without further challenge, it does not align with an impact certainty assessment that may be as low as 50%. We repeat the concern that this is applying leaps of faith and little more than guesswork to perhaps the most important surviving population of a species on the very brink of extinction. The para goes on to say, rightly, that “ <i>in the absence of evidence of the presence of a species (particularly rare and elusive species such as wildcat), it cannot be assumed, where suitable habitat is present, that the species is entirely absent or that the use of the area could not change in the future</i> ”. Yet this uncertainty is not factored in to the ES beyond proposals to seek minimal legal compliance in relation to the protection of den sites.

ES reference	Nature of problem	Description
9.63	Worst case	<p>This paragraph states that <i>“where there is uncertainty, realistic ‘worst case’ has been assumed”</i> [sic]. This is not what has happened in practice. A realistic worst case impact would be that (on the Applicant’s own data) 5-6 wildcat territories could be permanently displaced from the application site, an impact that (again using the Applicant’s own methodology) is of major national significance. However, this has been inexplicably transmuted into a ‘negligible effect’ that is ‘not significant’ in relation to habitat loss and on the basis of no more than a commitment to avoid contravening the legislation protecting individual animals and den sites, the worst case arrived at is a “probable” (i.e. 50-95%) negligible-minor disturbance effect. A logical course cannot be plotted between these two points, especially given the huge uncertainties inherent in the baseline dataset, and the ES is simply rendered unsound because of this.</p>
9.64	Uncertainties specific to wildcat	<p>Bizarrely, in light of the comments above, the Applicant does recognise at para 9.64 that “there is uncertainty around the potential long-term effects of wind farm development on the species. This is due to lack of published monitoring studies that have considered the issue in any detail”. [It is again noted that the Applicant has eschewed the opportunity to remedy this in respect of Clashindarroch I, despite the suite of commitments made there]. The para goes on to say: <i>“As a ‘critically endangered’ species in Scotland, a precautionary approach has been taken in both the assessment of effects and in determining the proposed suite of mitigation measures. The assessment has been informed by a review of available literature (e.g. relevant published wildcat research from Scotland and mainland Europe including monitoring studies associated with wind farms and other development projects such as roads) and all available wildcat data for the wider study area for the period winter 2013 to summer 2019”</i>. However this is not what has occurred, as evidenced by the mismatch between the conclusions naturally arrived at following the Applicant’s own stated approach and the conclusions actually presented in the ES, as explained in the rows above.</p>
9.66	Survey effort and limitations	<p>Whilst there is an honest admission of significant access limitations in this paragraph, these are not quantified and it is thus unclear how much of the application site was actually surveyed. Given the statements here, it could be as little as 50% or even less. This information is critical to understanding the confidence (or lack of) that can be attributed to the assessments of (inter alia) wildcat territories and den sites and should be dealt with much more transparently. Clearly, the areas most difficult to access and thus passed over by the surveyors are likely to have much higher potential to support wildcat dens</p>

ES reference	Nature of problem	Description
		and/or wildcats than areas more easily accessible to human traffic.
9.69	Hybridisation	<p>The ES states that a precautionary approach, as advocated by relevant EIA guidelines was taken in respect of the issue of hybridisation, the implication being that the possibility of some or all of the wildcat population at Clashindarroch being part of a morphologically cryptic hybrid swarm has not influenced the assessment. This is the correct approach in accordance with the precautionary principle and in respect of relevant case law. However, there are clear signs that the possibility of hybrids has influenced the importance placed on the wildcat population at Clashindarroch, and indeed that it continues to do so. The use of terms such as ‘important and relevant’ to describe “data from all putative wildcats and known or suspected hybrids” implies that data from the latter were regarded as subordinate in importance to the former.</p>
9.62-9.70	Limitations generally	<p>These paragraphs of the ES identify or allude to a suite of significant limitations that undermine the robustness of the baseline dataset on wildcat as related to the application site. They directly contradict the statement at the head of this section in 9.67 that the baseline data collected is considered to be ‘accurate’ and ‘detailed’. Such uncertainties play a suppressed role in the assessment process that follows, a process that is infected with language representative of false precision and unevidenced assertion. Where dealing with a species where the implications of such error may not be major, such as badger, this may be defensible, but in this case the receptor is possibly the most important surviving population of a critically endangered species.</p>