

Question 1(b) to the Communicant following meeting on 12th December 2012

Please provide specific information (hard proof) on the comments you submitted related to the decision-making for (b) the West Loch Awe Timber Haul Route, and show how your comments were *not* considered in the decisions taken.

1. Chronology of Events

A considerable amount of correspondence occurred between Avich & Kilchrenan Community Council (AKCC), the Forestry Commission Scotland (FCS) and other Government agencies in relation to the West Loch Awe Timber Haul Route (WLATHR) in the time leading up to its approval on the 20th January 2010 and indeed afterwards. In the main this focused on:

- The failure to properly assess both the Carriag Gheal and WLATHR projects for their cumulative impacts, such as was highlighted by AKCC on the 5th May 2006 in their letter to Mr. P. Smith, The Scottish Executive, Consents & Emergency Planning Unit (*Salami Slicing*).
- For instance the far higher load bearing and construction requirement now required by WLATHR, which was originally proposed as a timber haul route, but was now required to carry the loads associated with the wind turbines and their infrastructure.
- The degree in which the route selected was being driven by wind farm needs. Indeed where it not for this developer's requirements it would be possible for all normal forestry traffic and timber to exit to the south along a route which could then completely avoid known problem areas with the local road infrastructure.
- The potential for a lower track option, which would be environmentally superior to the option proposed. In addition an alternative route suggestion for the northern approach to Cariag Gheal, which would fulfill much in avoiding the negative aspects of the proposed routing in affecting golden eagle nest sites.

In relation to the Aarhus Convention, the WLATHR project fell under Article 6 of the Convention as an Environmental Impact Assessment procedure was required. This was conducted under the Environmental Impact Assessment (Forestry) (Scotland) Regulations 1999¹, which to transpose Article 3 of the Directive on Environmental Impact Assessment (85/337/EEC as amended), requires under Section 15 that the Commissioners complete an "assessment of the direct and indirect effects of the relevant project on the environmental factors specified in Schedule 4". Despite repeated requests for this environmental assessment, see for example e-mail at end of this reply to Question 1(b), it has never been provided. This is therefore considered to be a non-compliance with Article 6(9) of the Convention, where "each Party shall make accessible to the public the text of the decision along with the reasons and considerations on which the decision is based".

In relation to Article 6(8) of the Convention, i.e. "each Party shall ensure that in the decision due account is taken of the outcome of the public participation", the most relevant documentation in this regard is:

¹ <http://www.legislation.gov.uk/ssi/1999/43/contents/made>

- AKCC's letter of 20th October 2009 to Forestry Commission Scotland in relation to the Application for the West Loch Awe Timber Haul Route and Carraig Gheal Wind Farm Access (Attachment 1 of Question 1(b)).
- AKCC's subsequent correspondence via e-mail on the above on the 28th October 2009 (Attachment 2 of Question 1 (b)).
- The Reply of the Forestry Commission Scotland of the 29th January 2010 in relation to the above Submissions and the outcome of the formal consultation process (Attachment 3 of Question 1 (b)).
- The Forestry Commission Scotland Consent on WLATHR of 20th January 2010 (Attachment 4 of Question 1 (b)).
- The e-mail of Scottish Natural Heritage (SNH) to AKCC of May 2011 in which they confirm they were not consulted on an alternative route for WLATHR but only in relation to that route chose by the Forestry Commission Scotland. (Attachment 5 of Question 1 (b)).

2. **How Content of Submission was not Considered**

Please see the Table overleaf showing the main substance of the Submission and evidence as to how it was not considered. It is also important to note in their Reply of the 29th January 2010, the Forestry Commission Service stated:

- *"The purpose of the Environmental Impact Assessment is not necessarily to identify the best option but rather to identify that any chosen is acceptable in terms of its impact on the environment. We expect applicants to identify the main alternatives and an indication of the developer's choice, taking into account any effects. While pursuing the 'best option' is ideal there may be a variety of reasons why a developer chooses an alternative option".*

However, as was previously highlighted in relation to the lack of availability of an environmental assessment by the competent authority in justifying the 'reasons and considerations' for the decision, there was an overall lack of transparency in the conduct of this planning procedure.

Main Points in Submission	How the Forestry Commission addressed these Points in their Documentation
<p>Point 1: 20th October</p> <p>No explanation as to why Forest Enterprise presented maps purporting to be the original plans for the route.</p> <p>Interrelation between EIA and Certificate of Lawfulness.</p> <p>Neither had there been a response to the AKCC request for sections of the original route to be further discussed and acknowledged.</p>	<p>Failure to address these points – statement in relation to Certificate of Lawfulness issued by Argyll and Bute Council</p>
<p>Point 2: 20th October</p> <p>The EIA should be an Argyll & Bute Council exercise and not one presented by Forest Enterprise and partner.</p> <p>Aspects of the development were shown not to fall within the remit of general permitted development, e.g. the Loch Avich bridge and those surrounding borrow pit 27 and its proximity to a nest site of golden eagles.</p>	<p>Failure to address these points – statement in relation to Certificate of Lawfulness issued by Argyll and Bute Council.</p>
<p>Point 3: 20th October</p> <p>Potentially significant impacts upon Schedule 1 species. Unacceptable location of borrow pit 27 as referred to earlier.</p> <p>Admissions of a high degree of reliance on desk top</p>	<p>Additional mitigation recommended by Scottish National Heritage (SNH) and included in the Consent, such as restrictions on the use of this 'Eagle Section' by truck traffic. Borrow pit 27 withdrawn from the project.</p>

Main Points in Submission	How the Forestry Commission addressed these Points in their Documentation
reports, and that the 'walk over' survey was insufficient for needs having taken place only during July 09.	
<p>Point 4: 20th October</p> <p>Presence of rare butterfly sites acknowledged in documentation for borrow pit 27, which renders the site highly undesirable.</p>	Borrow pit 27 withdrawn from the project.
<p>Point 5: 20th October</p> <p>The vulnerability of the Loch Avich River area which hosts rare and irreplaceable lichen species. The mitigation suggested is neither able to guarantee success nor adequate in respect of these species. Reference to an alternative routing and a strong case for an application to be made to extend the area of this Site of Special Scientific Interest (SSSI).</p>	SNH as the Forestry Commission advisors content as to the mitigation measures. Submission in relation to alternative routing noted, but dealt with by reference to general comment above in italics.
<p>Point 6: 20th October</p> <p>Alternative route will reduce to negligible, the highly detrimental effects on the important Loch Avich Tourist attractions and local amenities provided by Loch Avich walks and parts of cycle routes.</p>	As previously for Point 5.

Main Points in Submission	How the Forestry Commission addressed these Points in their Documentation
<p>Point 7a: 20th October</p> <p>In relation to route chosen and alternative route available, AKCC expressed concerns in relation to validity of the claims made for justifying the chosen route in order to avoid gradients.</p>	<p>As previously for Point 5.</p>
<p>Point 7b: 20th October</p> <p>Bridge works and potential contamination of Dalavich water supply have still not been addressed. Alternative routing avoids this possible contamination.</p>	<p>Applicants will ensure Argyll & Bute Council services are aware of the conclusions of the Private Water Supply Survey. Condition 5 of the EIA Consent covers this aspect. Later report to be prepared in relation to mitigation measures, but not available at time of consent.</p>
<p>Point 7c: 20th October</p> <p>Confirmation that discussions are now well underway for traffic management plans with Argyll & Bute Council Roads department and Strathclyde Constabulary.</p>	<p>Discussions are underway via Condition 6.6 of Carrig Gheal wind farm consent. WLATHR Consent covers this under Condition 9.</p>
<p>Point 7d: 20th October</p> <p>Draft conditions to be contained within any consent would be circulated, including AKCC, prior to consent being given. As no such document has been received, we would like confirmation that consent is not yet imminent.</p>	<p>Draft conditions circulated on 19th January 2010.</p>

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<p>Point 8: 20th October</p> <p>Borrow pits ecological reports. In respect of the borrow pits, where key breeding sites for important species have been discovered and recorded, it is impossible to accept all current risk assessments of 'Medium' instead of 'High.' Actual distances from key breeding sites are missing crucial records.</p> <p>The collective losses of all the key breeding sites listed would have an undeniably major impact on the species involved and is therefore an unacceptable result.</p>	<p>Applicants uphold the conclusions of the ecological reports. SNH have also indicated that they are content with the report. On-going involvement of ecological clerk of works.</p>
<p>28th October – Technical Submission on behalf of AKCC by Michael Gregory of the Argyll Raptor Study Group</p> <p>Found the potential threats to the eagles to be considerably understated and the suggested mitigation to be inadequate.</p> <p>During construction and into the future disturbance will be caused to these eagles whether or not they are nesting. There is no scope for these eagles to relocate their nesting area. They are constrained by the neighbouring pair to the west, by existing forestry, and will be in future by the recently approved wind farm to the north. In his opinion the construction and operational use of this road</p>	<p>Issue addressed by further report and SNH revised conditions. Note: In their e-mail of May 2011 SNH stated they were not consulted on an alternative routing for the WLATHR by the Forestry Commission Services, but were of the understanding that such a route existed and from the little knowledge they had, that it would negate the impact on the Golden Eagles.</p>

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<p>will lead to the eventual abandonment of this territory. The mitigation proposed is insufficient. The Commission should refuse this application and suggest a new alignment well to the east.</p>	

From: Mainprize, Nick [mailto:Nick.Mainprize@forestry.gsi.gov.uk]
Sent: 21 November 2011 16:55
To: Christine
Cc: Mckay, Chrissy
Subject: RE: Re. Environmental Assessment for WLATHR....

Christine

Thank you for your e-mail. Apologies but I have been away from my office for several days. FCS does not carry out its own Environmental Assessment but determines an application for consent as per the process described in paras 10 to 16 of the Scottish Statutory Instrument 1999 No. 43 - The Environmental Impact Assessment (Forestry) (Scotland) Regulations 1999.

Regards

Nick

**Nick Mainprize –
Operations Manager**
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From: Christine [mailto:luanam@btinternet.com]
Sent: 16 November 2011 16:06
To: Mainprize, Nick
Subject: Re. Environmental Assessment for WLATHR....
Dear Nick,

I am aware that Nicky W. is handling the Fol request, but do you have an electronic copy of the FCS's own Environmental Assessment for the WLATHR? This would be useful for some queries in hand.

Many thanks,

Christine M.