

Loch Kemp Storage – Scottish Government Planning and Environmental Appeals Division Case PS-270-2

Response to Highland Council's Inquiry Statement and NatureScot's Final Consultation Response - 28 January 2026

1. INTRODUCTION

- 1.1 Ecological Planning & Research Ltd (EPR) have been commissioned by the British Lichen Society (BLS) to provide ecological advice and support and provide expert witness input in relation to the forthcoming Inquiry Hearing concerning proposals by Loch Kemp Storage Ltd for a 600MW pumped storage scheme referred to as 'Loch Kemp Storage' (Scottish Government Energy Consents Unit Application Number: ECU00003398).
- 1.2 At a pre-examination meeting held on 26 November 2025, the Reporter asked that interested parties (including the BLS) provide the following by 28 January 2026:
 - A response to Highland Council's (HC) Inquiry Statement (submitted to the Inquiry 17 December 2025); and
 - A response to the submission made by the applicant in response to NatureScot's (NS) Final Consultation Response (a letter dated 6 November 2025).
- 1.3 It should be noted that the second bullet point above necessarily entails addressing the content of NS's letter of 6 November 2025, to the extent that this is unavoidable in communicating the views of the BLS on the adequacy of the applicant's response.
- 1.4 This Response Note (RN) therefore is limited to addressing the abovementioned matters on which a specific response was requested by the Reporter by 28 January 2026, for the purposes of providing advanced visibility of the opinions held by the BLS.
- 1.5 On behalf of the BLS, EPR reserves the right to support and expand upon the views and observations expressed in this RN with additional detail and evidence provided in a Hearing Statement, the submission deadline for which we understand will be 4 March 2026.

2. BLS RESPONSE TO HIGHLAND COUNCIL'S INQUIRY STATEMENT

2.1 The Inquiry Statement provided by HC on 17 December 2025 outlines the 5 key reasons for objection advanced by the HC on pages 4 and 5. Of these, objection number 3 on page 4 states:

"3. The loss of ancient woodland is not acceptable, and the proposed compensatory planting is not suitable mitigation for the loss. The significant adverse effects of the proposed development on the qualities of the Ness Wood Special Area of Conservation (SAC), the Easter Ness Forest Site of Scientific Special Interest (SSSI), and the Urquhart Woods SSSI are not clearly outweighed by social, environmental or economic benefits contrary to NPF4 Policy 4 (Natural Places) and Policy 6 (Forestry, woodland and trees) and HwLDP Policy 52 (Principle of Development in Woodland)."

2.2 HC expand upon objection 3 at paragraphs 3.4 – 3.4.1 and 7.1 – 7.9.

2.3 Broadly, the BLS agrees with and supports HC objection number 3, in particular insofar as Ness Woods SAC is concerned.

Ancient Woodlands in General

2.4 As noted by HC, Ness Woods SAC is predominantly comprised of Ancient Semi Natural Woodland. Ancient woodlands come in many forms, but all are considered to be 'irreplaceable' habitat by NS (see here: <https://www.nature.scot/doc/guide-understanding-scottish-ancient-woodland-inventory-awi>) that, by definition, cannot be replaced through any form of compensatory woodland planting or new habitat creation. Policy 3 of National Policy Framework 4 (NPF4) refers directly to 'irreplaceable habitats' and says that negative effects should be "...fully mitigated in line with the mitigation hierarchy".

2.5 A key reason that all ancient woodlands are considered 'irreplaceable' - and one that is common to all ancient woodlands - is the fact that the unique biodiversity that they contain has developed and differentiated over centuries or even millennia.

2.6 As alluded to by HC, when a habitat, such as a woodland, remains relatively stable in the landscape over such vast lengths of time and is not subject to catastrophic 'stochastic' events (such as the addition of herbicides or long-term clear-felling), new species arrive over that time and become established. Each newly established species then itself creates the conditions that enable yet further species to arrive (for example, a plant that provides the larval food resource for a particular invertebrate species, or, in the case of lichens, being the host that enables the arrival of their obligate parasites).

2.7 This process of gradual and almost glacial diversification encompasses all trophic levels and constituent organisms within the woodland including trees, shrubs and other vascular plants, lichens, bryophytes, fungi, soil microbiota, invertebrates and larger fauna (mammals, reptiles, amphibians, avifauna etc). Which species arrive, when, and in what proportions, will also be determined by a wholly unique blend of prevailing influences upon the woodland in question, such as regionality, soils, geology, exposure, temperature, humidity, rainfall, air quality, landscape history and past management.

2.8 The result of this process is the creation of a woodland ecosystem that will be wholly unique to the location in question – no two ancient woodlands are alike. Given the unique blend of influences and vast spans of time (representing multiple human lifespans) that are required to reach this level of distinctiveness, it is not possible even for a highly skilled ecologist to replicate the habitat that would be lost.

The Ancient Woodland at Ness Woods SAC

2.9 Notwithstanding its broad support for HC objection number 3, the BLS believes that the Council's expressed concerns do not go far enough with respect to Ness Woods SAC.

2.10 Very occasionally, the epoch-spanning processes of woodland diversification described above lead to the creation of an ancient woodland that is not just 'unique' in the sense of there not being another one precisely the same, but one that is of such astonishing quality and distinctiveness, insofar as at least certain aspects of its biodiversity are concerned, that it represents a natural asset that is of international and global conservation importance.

2.11 For such woodlands, the concern is not simply limited to the notion that any compensatory woodland provision would not create something the same or similar. The concern is that the loss of the original woodland would necessarily entail the irreversible destruction of a unique and distinctive assemblage of organisms which emerged only as a result of a sustained harmony of exacting prevailing conditions over a vast expanse of time. In the case specifically of Ness Woods, the process and circumstances in which the woodland was created and then differentiated over time have led to the existence of a lichen assemblage that is so unique that almost no other similar examples of it are known to exist worldwide. This raises the spectre not just of the loss of a highly unique natural asset, but also one where the pre-conditions necessary to re-create this feature (the lichen assemblage) are so exacting that there can be no confidence in the human ability to deliberately replicate those conditions, particularly when these must be sustained over timescales that are measured in terms of multiple human lifespans.

2.12 The world-wide uniqueness of the lichen assemblage at Ness Woods SAC is easier to appreciate when given context by comparing it to a more readily understandable value scale as an appropriate frame of reference. If an equivalence were to be drawn between the importance of the lichen assemblage at Ness Woods SAC as a *natural* heritage feature, and the parallel conventions that are used to recognise features of *human* historical/heritage importance, then its importance would certainly exceed (for example) that of widespread buildings that are routinely given historic listings (e.g. churches or old cottages). In fact, using this analogy, the lichen assemblage would be equivalent to the top-level tiers of designation that are used to recognise human features that are of International heritage significance, such as a UNESCO World Heritage Site (for example the Antonine Wall or St Kilda).

2.13 The fact that the importance of Ness Woods SAC and its lichen assemblage is primarily derived from its naturalness may make it more difficult to perceive and appreciate than a human-made structure, but that does not make it any less real. It should also be noted that, whilst Ness Woods SAC is primarily valued for its natural component, it is in fact an ancient pasture woodland, and centuries of human management including livestock grazing have certainly played a part in developing its distinctiveness.

- 2.14 Ness Woods SAC reaches this high level of importance with respect to the assemblage of rare lichens and their related obligate parasites that it supports. It is for this reason that the BLS has taken the highly unusual decision, for the first time in its history, to lead evidence in a planning inquiry in support of its objection.
- 2.15 The Technical Note produced by EPR on behalf of the BLS to inform its original objection to the planning application (dated 22 February 2024) outlined what makes Ness Woods SAC so important for global lichen conservation. This information will be expanded upon further in the Hearing Statement submitted on behalf of the BLS on 4 March 2026, and consequently this detail is not repeated here for the sake of brevity.
- 2.16 However, the BLS wishes it to be noted at this juncture that the irreplaceable lichen assemblage as a 'constitutive characteristic' of the woodland is recognised in the designation of Ness Woods as an SAC under the Habitats Directive and subsequent Regulations. This legislation, that affords SACs legal protection as nature conservation sites of international significance, has in the view of the BLS not been properly adhered to, specifically in relation to the need to establish that there are no alternatives to achieving the objectives of the proposal that are less harmful to the SAC, and in significant shortcomings in the provision of appropriate compensation.
- 2.17 The BLS will expand upon these points further in evidence through the Hearing Statement of its appointed expert witness on ecological issues.

3. BLS RESPONSE TO THE APPLICANT'S RESPONSE TO FINAL NATURESCOT CONSULTATION RESPONSE

- 3.1 This section of the RN outlines the responses of the BLS to the Applicant's response (dated 17 December 2025) to NS's Final Consultation Response to the proposals (dated 26 November 2025). For expedience and transparency, our responses have been limited to addressing points that are of direct relevance to the case that the BLS will make in the Hearing Statement that it will submit by 4 March 2026. These are outlined below.

The Application of the 'Alternatives' Test Set out in the Habitats Regulations

- 3.2 The Applicant notes between pages 1 and 2 of the Applicant's letter of 17 December 2025 that:

“...As NS note in Annex B of their response, it is not within NS's remit to comment on the first two limbs of a derogation case: whether there are (i) alternative solutions or (ii) imperative reasons of overriding public interest for the development to proceed, but it is within their remit to comment on the suitability of proposed compensatory measures.”
- 3.3 Firstly, and for clarity, the BLS does not seek to make the case that the requirement to deliver projects that provide sources of renewable energy does not constitute 'imperative reasons of overriding public interest'. Our Hearing Statement will therefore be silent on this particular issue.
- 3.4 However, as highlighted in our TN informing the BLS objection to the planning application dated 22 February 2024, the BLS is of the opinion that the requirement under the Habitats Regulations to consider potential 'alternatives' to the plan or project has not been correctly or adequately approached.

3.5 Specifically in relation to the above, it is the opinion of the BLS that appropriate alternatives to the submitted layout of the proposed development, which would have achieved the objective of the scheme, whilst resulting in reduced damage to the Ness Woods SAC, were not given proper consideration. Such less harmful alternative layouts were apparently discounted early on in the design of the proposals, prior to receipt of meaningful ecological input on lichens and without evidenced justification. The BLS is unaware of any evidence having been provided to support rejection of those alternative layouts on justifiable technical, legal or financial grounds, and instead the Applicant appears to proceed on the basis of an assertion that they are not viable.

3.6 The Applicant is correct that NS have declined to comment on these aspects of the application of the Habitats Regulations Assessment (HRA) process to the proposals. With respect to Ness Woods SAC, NS state on page 16 of their final consultation response that they “*...do not have a remit to advise on the technical or financial feasibility of alternative solutions...*”.

3.7 The understanding of the author of this RN is that the Scottish Government is the ‘Competent Authority’ for the purposes of applying the legal tests of the Habitats Regulations to the proposals. In this capacity, before consenting the proposals, the Competent Authority must establish that there are no alternative solutions to the proposals which would achieve the objectives of the project in a way that would reduce harm to the Ness Woods SAC, and which would be feasible from a legal, technical and financial perspective.

3.8 The Hearing Statement submitted on behalf of the BLS will outline how it is considered that the Applicant has failed to provide the necessary evidence to enable the Scottish Government to apply the ‘alternatives’ test of the Habitats Regulations. As a result of the failure to provide the required information, the test cannot be applied and as a result, the application should be refused.

3.9 In short, the BLS believes that opportunities to significantly reduce negative effects on the integrity of the SAC in the form of damage and destruction of the internationally important lichen assemblage was discounted at a very early stage of the conceptual development of the proposals, without the benefit of the required ecological information to inform this judgement.

3.10 Given the fact that NS does not provide advice on the application of this particular aspect of the derogation tests in the Habitats Regulations to development proposals, it is particularly important that adequate scrutiny is now given to this issue and any lacuna in the evidence is explored by the Reporter prior to a recommendation being made to the Scottish Ministers.

Adequacy of Proposed Compensation Measures for Damage to Ness Woods SAC

3.11 Notwithstanding the above regarding the need for the ‘alternatives’ test of the Habitats Regulations Assessment (HRA) process to be passed before compensation for damage to an SAC can be considered, pages 2 and 3 of the Applicant’s letter responding to NS summarises the basis upon which NS have accepted that the Applicant’s proposed package of compensation measures is adequate.

3.12 In short, the BLS is of the view that notwithstanding NS’s position, the Applicant’s proposed compensation measures for damage to Ness Woods SAC is inadequate to ensure the continued overall coherence of the UK National Sites network (formerly Natura 2000), which is the requirement of the Habitats Regulations.

3.13 This is particularly (though not exclusively) due to the fact that the compensation measures cannot be relied upon to address the significant and irreversible loss to the internationally important lichen assemblage that will result from the proposals, and which is present within an irreplaceable habitat type (as per the commentary outlined above in **Section 2** of this RN).

3.14 Page 7 of NS's Final Consultation Response dated 26 November 2025 acknowledges that:

"In particular, the proposed access track will result in habitat loss within one of the richest parts of the SAC on Dell estate for epiphytic lichen communities which are an important component of both woodland types; and within the densest area of lichen species of high and very high value..."* [Our emphasis]

*This is a reference to the two woodland habitat types that comprise qualifying features of the SAC; 9180 **Tilio-Acerion* forests of slopes, screes and ravines (which are a Habitats Directive Annex 1 Priority Habitat) and 91A0 Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles.

3.15 With reference to the above, the Applicant's proposed compensation package (as set out in the report entitled *Loch Kemp Storage: Case for Derogation* (Royal Haskoning, 23 February 2025)(the 'Derogation Report') and NS's assessment of its adequacy as outlined in their Final Consultation Response of 26 November 2025, both utilise the misguided metric of comparing the overall ratios of qualifying habitat area damaged or destroyed to new habitat area created or enhanced. This is despite acknowledging at para 4.3.9 of the Derogation Report that the generic application of fixed compensation ratios is 'not considered to be useful'.

3.16 The principal reasons that reliance cannot be placed on the scale of proposed new and enhanced habitat are that:

- As explained above in **Section 2**, the exacting conditions required to enable an internationally important lichen assemblage of the type supported by Ness Woods SAC to develop, cannot be reliably replicated.
- This is evidenced by the fact that, even though the extent of the two SAC qualifying woodland habitat types is much larger than the area impacted by the Loch Kemp proposals, the area of important lichen interest, so far as is known, is largely confined to a more limited area within the wider woodland that provides these exacting conditions, and which is being disproportionately impacted.
- As acknowledged by NS, the access track for the proposals directly destroys a significant part of this very limited area of important lichen interest, and will fundamentally imbalance the remainder of it, by irreversibly altering the biophysical conditions such as temperature, light and humidity that have enabled the lichen assemblage to develop over the centuries that it took (these changes to prevailing biophysical conditions are acknowledged on page 7 of the NS consultation response).

3.17 Insofar as the lichen assemblage is concerned, there is therefore a sense of false adequacy being imparted by contrasting seemingly large figures for the areas of new and restored habitat that are proposed, against the smaller areas of habitat anticipated to be lost or damaged. In reality, the area of any new or restored habitat that may (eventually) be able to attain the attributes necessary to develop a similar lichen-rich flora to the areas being lost are likely to be much smaller (if they transpire to exist at all). Even if all of the exacting conditions needed to

develop a lichen assemblage similar to the one being destroyed are achieved, these conditions would then need to be maintained over centuries (something that cannot reliably be secured with any confidence).

3.18 The BLS has a number of other objections and concerns in relation to the proposed package of compensation measures, which include:

- The proposals to alter the management of SAC areas to improve the condition of the qualifying woodland habitat types and their supported lichen assemblage, conflate the provision of compensation with management measures that are in any case already required to be delivered under the Habitats Regulations vis-à-vis Articles 6(1) and 6(2) of the Habitats Directive.

In short, the Applicant cannot offer to provide appropriate management of the SAC habitats as compensation for damaged or destroyed habitats, as securing the management of SACs, in a manner that meets the ecological needs of their qualifying habitats, is already an expectation of the legislation.

If providing appropriate management were to be accepted as compensation for harm, this would create a perverse incentive on SAC owners to permit appropriate management of internationally important sites to fail or languish, so that restorative interventions could then be offered as 'compensation' for permitting some form of damaging development.

- Whilst the BLS agrees that the reduction in Red Deer grazing pressure would be beneficial to the ecology of Ness Woods SAC, the Herbivore Impact Assessment (Adoxa Ecology, November 2025) that forms an appendix to the Applicant's response to NS does not adequately recognise that the important lichen assemblage present in Ness Woods SAC has been derived from the history of this wood as an ancient pasture woodland (i.e. with grazing by livestock), and that the favourable conservation status of the lichen assemblage depends upon continued grazing of an appropriate kind at an appropriate level.
- Broadly, the BLS is of the view that the implementation of some of the recommendations in the Herbivore Impact Assessment (Adoxa Ecology, November 2025) have been compiled without full cognisance of the requirements of the lichen assemblage and would likely cause significant harm to it, if implemented as currently written. It also appears as if this work has been subject to constraints that have undermined the confidence that can be placed in the recommendations arrived at (for example due to the season in which the survey work was carried out).
- As previously noted in the EPR Technical Note (dated 22 February 2024) produced to inform the BLS objection to the planning application, whilst the main concern of the BLS relates to the Internationally important lichen assemblage in Ness Woods SAC, the proposals are also predicted to cause significant loss and destruction of a separate, Nationally important assemblage of epilithic and terricolous lichens (lichens that live on stones/boulders and on the ground) around Loch Kemp itself. Some of the proposed compensation options to address impacts on these lichens are highly experimental and in the judgement of the BLS hold a high risk of failure. None of the documents produced by the Applicant since the BLS's previous objection to the planning application appear

to have addressed this issue and provided any form of reassurance. Whilst these lichens do not form part of a qualifying feature of the Ness Woods SAC, they are nonetheless of National importance (i.e. at the level of importance that would justify the designation of a Site of Special Scientific Interest (SSSI)) and their loss and the low risk of success associated with the proposed compensation options must therefore form part of the consideration of the planning balance.

4. SUMMARY AND CONCLUSION

- 4.1 So far as the Applicant is concerned, the BLS is of the view that the requirements of the Habitats Regulations relating to the consideration of alternatives and the provision of compensation measures have not been met and are not adequately addressed in the documents submitted to the Inquiry.
- 4.2 The Applicant has not met the requirements of the Habitats Regulations to establish that there are no feasible alternative layouts to the proposed development that would be less damaging to the qualifying features of the Ness Woods SAC, and is proposing a package of compensation measures that is highly unlikely to succeed in replacing the loss of the Internationally important lichen assemblage that forms a key part of one of the SAC qualifying features. Some of the compensation that is proposed also duplicates the positive management that should already be taking place as part of a responsible stewardship of Ness Woods SAC.
- 4.3 Adequate compensation in this respect is not as simple as merely providing compensatory planting of forestry or woodland that can be readily provided – the requirement is effectively to replace an irreplaceable habitat type, that is currently supporting an Internationally important assemblage of lichens with highly exacting requirements for survival and proliferation.
- 4.4 So far as HC is concerned, the BLS supports its position (objection number 3) as detailed above in **Section 2**. I have provided detailed reasoning above which supports why the objection is justifiably made.
- 4.5 The Hearing Statement submitted on behalf of the BLS by 4 March 2026 will set out in more detail the evidence underpinning the concerns that are outlined above and provide a more detailed commentary on observations gleaned from the various documents and submissions that are referred to.
- 4.6 The BLS reserves the right to respond to any additional information or new evidence submitted by any of the parties to the Appeal.

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