



Scottish
Forestry
Coilltearachd
na h-Alba

Enforcement Notice

Notice No. SFEAIN009

Scottish Statutory Instrument 2017 No.113
The Forestry (Environmental Impact Assessment) (Scotland) Regulations 2017

“The Regulations”

<http://www.legislation.gov.uk/ssi/2017/113/contents/made>

Statement of Reasons under paragraph 3(5) of Schedule 4 of the Regulations

Name and address of the person on whom notice is served:

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The Forestry Carbon Sequestration Fund
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Statement of Reasons

Background

1. Pryor & Rickett (P&R) are the agents working for the landowners of the Stobo woodland creation project. The Landowner is the Forestry Carbon Sequestration Fund. True North Real Asset Partners are the managers of the Fund.
2. On 7 June 2023, you submitted an EIA Screening Opinion Request (SOR) for 873ha of afforestation, 13ha of road building and a 2ha quarrying at Stobo.
3. On 18 January 2024, Scottish Forestry issued a screening opinion on the Stobo project, concluding that the project was not an EIA forestry project, which would require Scottish Forestry's consent.
4. You also applied to the Forestry Grant Scheme (FGS) and were awarded a contract to start work in 5 February 2024. FGS contract guidance states that work can only start once the contract is awarded and as such Scottish Forestry believed that all work relating to this project commenced from this date. The screening opinion dated 18 January 2024 and the FGS contract were subsequently reduced by the Court of Session. On 10 September 2024, Scottish Forestry issued an enforcement notice requiring you to discontinue all work. This notice stated that a Statement of Reasons under paragraph 3(5) of Schedule 4 of the Regulations would be issued separately. This is the Statement of Reasons.
5. This Statement of Reasons has been produced as soon as practicable. Following the serving of the enforcement notice on 10 September 2024, there were conversations between Scottish Forestry and Pryor & Rickett during September and early October around the terms of the enforcement notice, as well as wider EIA process issues, following the Court of Session's reduction of the EIA Screening Opinion. Scottish Forestry and Pryor & Rickett discussed potential meeting dates on 5 November 2024. A meeting took place on 18 November 24 where the blanket over-spraying and unauthorised track construction were discussed, amongst other matters.
6. The blanket over-spraying and unauthorised track construction were referenced in the enforcement notice and Annex 1 as giving rise to concerns and the need for further consideration of the environmental impact of those activities. You did not inform Scottish Forestry of these activities before they were undertaken and they have not been consented to. You committed to carrying out assessments on the likely impact of the over-spraying on landscape and biodiversity but no assessments have been received. Scottish Forestry visited the site on two occasions following the serving of the enforcement notice, in late 2024 and in early 2025, to assist with their own, further assessments.

Blanket over-spraying with herbicide

7. On 27 August 2024, you confirmed that in August – September 2023, 97.3ha of heather and 59.4ha of predominately grass vegetation was over-sprayed with Glyphosate herbicide using quad-based boom spraying equipment. You also confirmed that further herbicide over-spraying of 86.8ha of heather was planned as indicated by the heather treatment map (third map) included within Annex 2 of the Enforcement Notice issued on 10 September 2024. The particular formulation or dose rate of herbicides to be applied was not provided.

8. As you had not informed Scottish Forestry that these operations were planned or had taken place before August 2024 and, as these aspects of the forestry operations were not included in the Operational Plan or the EIA screening opinion request, which was submitted on 7 June 2023 (or any further documents submitted following that), the likely effects of these forestry operations were not considered as part of Scottish Forestry's EIA screening opinion. The operational plan, submitted as part of the FGS application, contained the following statement:

“Bracken and heather serve as considerable constraints to crop establishment. A combination of mechanical and chemical treatments will be implemented prior to cultivation to assist with establishment post-planting.

Forestry and Water Guidelines will be followed for all operations”.

9. There was no mention of blanket over-spraying either pre-or post-screening opinion. The statement uses the phrase “will be” indicating it is referring to future operations and provides no indication that extensive herbicide treatment had already been carried out before Scottish Forestry had adopted a Screening Opinion. You stated that you “will be” following Guidelines.
10. Scottish Forestry considers that the over-spraying with herbicide applications are not consistent with good forestry practice as set out in the UK Forestry Standard (UKFS), the UK governments’ approach to sustainable forest management. See UKFS v4, page 34, Good Forestry Practice Guideline 24:

“minimise the use of pesticides and fertilisers in accordance with Forestry Commission and Forest Service guidelines”

11. Forest Practice Guide – Reducing Pesticide Use in Forestry (2004), published by the Forestry Commission and Forest Research, is the most up to date guidance on good forestry practice in this area. The section on heather management is on pages 71- 76. The general message within this publication is to find methods that minimise the amount of chemicals used.
12. Scottish Forestry did not have the opportunity to consider the proposed approach to herbicide application within the screening opinion as a result of non-disclosure by you. The project was approved under UK Forestry Standard 4th edition (the 5th edition is now in force but is substantively the same in relation to this point).
13. The spraying has resulted in the mortality of the vegetation within the 157ha. The area sprayed is highly visible from across the woodland creation site and from within the neighbouring property. The John Buchan Way footpath dissects the main area of

spraying. The spraying did not take place directly on, or within, 10m of the footpath. Concern about the spraying has been raised by members of the public on social media and website platforms.

14. The spraying that has taken place has had significant adverse effects on the environment as set out at paragraphs 22 to 47 and continues to have significant adverse effect as set out at those paragraphs. It was carried out without EIA consent. In light of the above, Scottish Forestry are concerned that future herbicide spraying will not be carried out in accordance with good forestry practice and guidelines. You have not provided any assurances in relation to future spraying which may mitigate the impact on the environment. The further blanket spraying of herbicide as proposed is likely to have significant effects on the environment as outlined in further detail in the paragraphs 22 to 47

Construction of unauthorised track

15. Scottish Forestry has also found out during a site visit in late summer 2024 that an access track has been excavated involving major widening of the existing track and the placement of significant overburden to one side. In places, this has widened the minor access track to approximately 4-5m and 1-2m in depth. In constructing this track, there has been considerable movement of soil and bedrock and little regard to the management of water and run-off as the track runs straight up the hill with a gradient of up to 25% and contains no drains or cut-offs for water.
16. The track that was present prior to the unauthorised works was estimated to have a c.2m width running surface, which would be suitable for ATV/quad bike access.
17. The extent of the excavation on this track is substantial. It is a very steep, wide and deep track and does not resemble a temporary track. Scottish Forestry would not approve construction work of this type because it does not conform to good road building practice.
18. The track upgrading work was undertaken after the EIA screening opinion was submitted to Scottish Forestry but you did not include this work in the package of information that you provided through that screening opinion process. The Stobo Ops Map: Roading Map dated 9 November 2023 and submitted by you as part of the EIA screening process shows the area where the track was constructed as marked in black as *(Existing track) No work y1*.
19. In National Scenic Areas (NSAs), Permitted Development rules which allow for the construction of forestry tracks, don't apply, unless the track is part of an approved forestry scheme. The Stobo woodland creation project is not an approved forestry scheme (and the unauthorised track was never part of the EIA screening request for the project). The track construction has clearly been undertaken to allow you to access another part of the Stobo forestry project area to carry out forestry ground preparation operations.

20. The track has a significant effect on the environment for the reasons stated in paragraphs 48 to 53 (impacting particularly on landscape and visual amenity, and soil and water) and has been constructed without EIA consent.

Assessment of significance by Scottish Forestry

21. Scottish Forestry has published guidance on the assessment of Significance for EIA forestry projects. This guidance, which uses the commonly understood approaches of Sensitivity and Magnitude to assess Significance, can be found at pp17-20 of Undertaking an Environmental Impact Assessment in Forestry (2022):

[Undertaking an Environmental Impact Assessment in Forestry 2022 \(4\).pdf](#)

Conclusion

Blanket over-spraying with herbicide

22. Blanket over-spraying has caused, and continues to cause, significant adverse impacts on a number of receptors, including landscape and visual amenity and biodiversity (habitats and species), and further blanket over-spraying is likely to cause further, and cumulative, significant adverse impacts.

Landscape and visual amenity

23. Our assessments of the likely impacts of the herbicide spraying on landscape and biodiversity are based on the current information available.
24. The blanket spraying of herbicide in 2023 had, and continues to have, a significant impact on the landscape. The works have been carried out within the Tweedsmuir Uplands Local Landscape Area (a local authority designation) in sight of the John Buchan Way, a well-recognised local walking route. It is visible from the Upper Tweeddale National Scenic Area (NSA), including sections of the John Buchan Way as it passes Hammer Rig and Hammer Knowe on the northern boundary of the National Scenic Area. Further blanket spraying of herbicide is likely to have a significant adverse effect on the landscape and visual amenity of the NSA.
25. At Section 8.3 of the Landscape and Visual Appraisal (LVA) dated 17 November 2022 and produced for you by Mabbett & Associates Ltd, it is explained that areas “*of existing rough grazing and dwarf-scrub heath would be cleared to complete tree planting.*” On Scottish Forestry’s site visits, it was noted that manual cutting with brush cutters, which was much less intensive, has been used in parts, but there are other areas where extensive chemical treatment of vegetation has been used.
26. At Section 8.2 of the LVA, the understanding is given that “*there is no requirement for the permanent loss of any existing trees, woodland or substantial areas of vegetation.*” This forms the basis of assessment for your landscape specialist. As a result, it is clear that the on-site methods and operations used, have not been properly or fully assessed within your landscape appraisal.

27. The chemical treatment applied in 2023 has killed large areas of ground vegetation, resulting in an obvious change in colour and texture of the affected areas. This sudden change has adversely impacted the character of the landscape and visual amenity for those visiting the site. This change will continue to be strongly evident for several years, potentially until canopy closure of the new planting. Further blanket spraying of herbicide, as proposed by you, will exacerbate and extend this adverse effect.
28. The assumed, and assessed, method of vegetation treatment (i.e. localised clearance) would also have led to the eventual loss of much of this vegetation. However, the change would have been gradual and much less noticeable to those visiting the site. Given that an extensive area of heather habitat has suffered almost complete mortality, this means that treatment of heather on the remainder of the site is sensitive and may have a greater impact than that which would have been expected had the initial heather treatment been less intensive and severe.
29. In terms of likely significant effect, because the chemical treatment took place in a Local Landscape Area (Special Landscape Area: Tweedsmuir Uplands) and around the John Buchan Way, Scottish Forestry assesses the Sensitivity as Medium. In terms of Magnitude, the over-spraying took place in August-September 2023 and remains highly visible in the landscape, with the expectation that this will last for at least a further two years. Therefore (having regard to the smaller but visible, previous land use practices involved in grouse moor management), Scottish Forestry assesses the magnitude as Moderate with an overall significance of Moderate. In relation to the proposed, further herbicide over-spraying, because of the cumulative impact arising from this work following on from the initial spraying, we assess the sensitivity as Medium but the Magnitude as Major, giving a Significance of Major.
30. It is concluded that the blanket over-spraying of herbicide has had, and continues to have, significant negative effects on landscape and visual amenity, and any future blanket over-spraying is likely to have further, and cumulative, significant adverse effects.

Biodiversity (habitats and species)

31. In terms of the impact on biodiversity, due to the blanket over-spraying of 157ha of predominantly dry dwarf shrub heath, it is likely that species reliant on the heather moorland have been, and will continue to be, significantly adversely impacted by the widespread rapid mortality of the heather. Further blanket over-spraying is likely to cause further, and cumulative, significant adverse impacts.
32. A walkover of the sprayed areas was undertaken by Scottish Forestry and this confirmed a greater than 95% mortality rate of the heather in the sprayed areas. There were small patches scattered throughout where there was some recovery, either where a small section of heather, *Calluna vulgaris* or Bell heather, *Erica cinerea*, was missed by the chemical and survived or where new plants have started to colonise e.g. tormentil, *Potentilla erecta*, bracken, *Pteridium aquilinum* and various grasses were colonising, but in general the areas sprayed were covered in dead vegetation.

33. Aerial photographs and comments in the ecology report of the neighbouring property give some indication as to the condition of the heathland prior to over-spraying.
34. Aerial photos show that there was historic muirburn taking place, which is likely to have had a detrimental impact on the heathland condition. The 2022 report by NatureScot Research Report 1302 '*Reviewing, assessing and critiquing the evidence base on the impacts of muirburn on wildfire prevention, carbon storage and biodiversity*' is a comprehensive look at the effects of muirburn on upland habitats. One of the main findings of the report is that there is consistent evidence that *Calluna* cover increases over time following burning, reducing the diversity and abundance of other moorland plant species.
35. The ecology report of the Stobo woodland creation project (Mabbet (Nevis Environmental Ltd), 2022) does not comment on the condition of the heath, but the ecology report for the neighbouring property of Broughton Hope (Applied Ecology Ltd) states that '*The Site at Broughton supports a typical mosaic of upland habitats, which have been substantially altered by muirburn and grazing. Although these habitats may have had some value for protected species... their intrinsic ecological value has been negatively affected as a result of various land management practices, resulting in significantly reduced structural and compositional diversity.*
36. Given the proximity and similar historic management of the heathland it can be reasonably assumed that areas of the heathland at Stobo were also ecologically compromised by grazing and muirburn. Heather dominated heathland is relatively poor in associated insect and bird species compared to upland heath that is in favourable condition. Upland heath in favourable condition is typically dominated by a range of dwarf shrubs such as heather *Calluna vulgaris*, bilberry *Vaccinium myrtillus*, crowberry *Empetrum nigrum* and bell heather *Erica cinerea*.
37. There are very few records of notable species of invertebrates within the Stobo boundary, with just Dark Green Fritillary *Speyeria aglaja* and Small Heath *Coenonympha pamphilus* found within the site, but not within the sprayed area.
38. However, the sprayed areas are likely to have supported typical heathland invertebrate species such as moths, ground and rove beetles, money spiders and crane flies. The greatest biomass is likely to have been from crane fly larvae and click beetle larvae as well as annelid worms. Bumblebees and dragonflies are also likely to have used the heather habitat.
39. It is difficult to say for certain what the impact the herbicide treatment would have had on invertebrates, however, it is likely that the loss of below and above ground biomass to feed on, the loss of nectar, pollen and berries and the reduction in shelter will have caused a dramatic decline in the number of invertebrates species in the sprayed areas.
40. There was one previous record of a lizard found on the site, this was outside the sprayed area. The Mabbet ecology report states that '*much of the site, particularly the areas of dry heath, acid grassland and scattered bracken, provide highly suitable habitat for common lizard and potentially adder Viper berus*'. Given the diet of common lizards consists mainly of invertebrates, a decline in the number of insects and spiders would have had a knock on adverse effect on the numbers of lizards.

41. Structurally diverse moorland can provide high densities of small mammals, notably field voles *Microtus agrestis* although voles are herbivores and feed mainly on grasses rather than heathers. Therefore, they are more likely to be found in the grassland areas within the heather. Voles are an important element in the food chain, and are especially important prey for birds of prey, such as kestrels, owls, and buzzards as well as other animals such as the adder *Vipera berus*.
42. Due to the lack of linear woodland features in the open hill areas that were sprayed, it is unlikely that the herbicide spraying would have had an impact on bats.
43. Few breeding bird species appear to be solely dependent upon heather moorlands, however, heather is an important feeding and nesting habitat for red grouse *Lagopus lagopus*, and to a lesser extent black grouse *Tetrao tetrix*. Scrubby areas on heaths are important for black grouse. The records of black grouse on the site are from the fields around the bothy and on the eastern site of the site. An area close to the black grouse breeding site was sprayed (Pirliega Hill). The initial application of herbicide was in late August 2023, which would have been after the black grouse chicks were feeding on insects (black grouse chicks initially feed on insects before moving onto more plant material). Any breeding that took place in 2024 is likely to have been impacted by the dead vegetation and reduction in numbers of invertebrates.
44. There were over 50 records of meadow pipit *Anthus pratensis* and skylark *Alauda arvensis* using the site and the herbicide application would have reduced the food available to them. Both meadow pipit and skylark are prey for some raptor species.
45. The key differences in likely significant adverse impact between the non-standard approach undertaken by you and approaches, which would have been in line with UKFS and Forest Practice Guide – Reducing Pesticide Use in Forestry (2004) are as follows:
 - Speed of heather loss – if the project had been undertaken in line with the UK Forestry Standard, it would have resulted in heather loss occurring over eight to 12 years depending on e.g. altitude and topography. Therefore, on average, 10 years after planting, the heathland habitat would have been largely replaced by plantation, consisting mainly of Sitka spruce but with smaller areas of Scots pine and native broadleaves.
 - In addition, habitat enhancement measures, such as native woodland planting and predator control would have been in place to reduce the significance of the impacts. Whereas the project as undertaken has resulted in almost entire heather loss in the area sprayed within 6 months without any of the habitat enhancement measures being implemented.
 - Very high mortality of heather: if the project had been undertaken in line with UKFS, it is likely that areas of heather would have persisted where the approved design had open ground, native broadleaved woodland and/ or Scot pine due to the light canopy under such species and types.

46. Considering the past and continuing adverse effects from the blanket over-spraying, the likely significance of the project as undertaken on biodiversity (habitats and species) is assessed as follows: Sensitivity is assessed as Medium because of the likely impact on a regionally important population of black grouse and the other species highlighted above, Magnitude is assessed as Moderate to Major because of the anticipated length of time of the impact, with an overall significance of Moderate.
47. Given that an extensive area of heather habitat has suffered almost complete mortality, this means that future treatment of heather on the remainder of the site is particularly sensitive and may have a greater impact than that which would have been expected had the initial heather treatment been less intensive and severe. In relation to the proposed, further herbicide over-spraying, because of the cumulative impact arising from this work following on from the initial spraying, we assess the sensitivity as Medium but the Magnitude as Major, giving a Significance of Major.

Construction of unauthorised track

48. Within the National Scenic Area (NSA), a new access track has been created (in and around the footprint of a much smaller track) which connects with the John Buchan Way near Hammer Rig (approx. NT 154 384). This has been constructed by excavating material from steep slopes above the Hopehead Burn and piling the resulting spoil alongside.
49. The track way engineering works described above were not included in the screening request and weren't assessed by Scottish Forestry. Scottish Forestry details below the impacts of the unauthorised track on landscape, soil and water.

Landscape and visual amenity

50. The depth of the exposed face, the width of the track and the height of the spoil bund make the track visible at distance and across large parts of the valley; the location of the track, on a steep valley face, is prominent (particularly for users of the Public Right of Way from Stobo Castle and the John Buchan Way). This track construction and impact was not considered as part of your LVA.
51. The unauthorised track construction has caused, and will continue to cause significant adverse impact on landscape and visual amenity. Although, over time, revegetation will occur on parts of the track and on the less steep slopes and batters that have been created, the extent and severity of the unauthorised works means that the works will have future significant, adverse impact unless the track is restored to its previous condition.
52. The past, continuing and future impact of the track as currently constructed on landscape and visual amenity is assessed as follows: because it is within a National Scenic Area and has good levels of public usage, Sensitivity is assessed as Medium to High. Because the poor construction methodology and very obvious scale of works on an excessively steep slope are very far away from good practice, together with the

apparent permanency of the current track, the Magnitude is assessed as Major with an overall Significance of Major

Soil and water

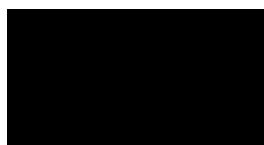
53. There is also a likely soil and water impact as a result of the poorly constructed track. Sections are at 25% gradient, which is greater than the 15% allowed in the NatureScot hill tracks guidance, and is likely to lead to soil erosion and potentially sedimentation of water courses. This is a long term effect and likely to get worse over time, therefore being a continuing and future adverse impact. The track sits above the Hopehead burn. Although a small lochan sits between the burn and the River Tweed Special Area of Conservation, which lessens the likelihood of impact to that receptor, there remains a material risk of pollution to the Hopehead burn. The Sensitivity is therefore assessed as Medium and the Magnitude as Moderate, giving an overall Significance of Moderate.

EIA forestry project

54. This Statement of Reasons provides the reasons for considering that the Stobo woodland creation project is an EIA Forestry Project and therefore requires Scottish Forestry's consent. In liaison with Scottish Forestry, you should now commence the Scoping process and seek a Scoping Opinion from Scottish Forestry.

Neil Murray Conservator

Date: 18th February 2025



For Scottish Forestry

Right to challenge the validity of the decision

Scottish Forestry's decision is final, subject to the right of any aggrieved person to apply to the Court of Session for judicial review.

Judicial review is the mechanism by which the Court of Session supervises the exercise of administrative functions, including how the Scottish Ministers exercise their statutory function to determine applications for consent. The rules relating to the judicial review process can be found on the website of the Scottish Courts¹.

Your local Citizens' Advice Bureau or your solicitor will be able to advise you about the applicable procedures.

¹ <https://scotcourts.gov.uk/rules-and-practice/rules-of-court/court-of-session-rules>