

AGENDA ITEM 5

APPENDIX 2

**2016/0153/DET
AND
2016/0143/LBC**

**HABITATS REGULATIONS
APPRAISAL**

Habitats Regulations Assessment:

2016/0153/DET Balavil Mains Farmhouse, Kingussie

Introduction

This is a record of the assessment under regulation 48 of the Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) for the planning application 2016/0153/DET made by the Balavil Estate. The development is for the conversion of redundant farm buildings to visitor facilities and commercial use, including alterations and extensions of existing structures. Construction of new buildings for café, catering and events use and formation of parking areas.

The proposal lies immediately adjacent to the Raitts burn, which forms part of the River Spey SAC. There is potential that during clearance of the site, construction of car parking and renovation of buildings, that pollution and siltation of the Raitts burn could occur should material from the site run-off into the burn.

Background to the assessment

The principal documents which have been taken into account for this assessment are:

- Otter Survey, Atmos Consulting (October, 2016)
- Species Protection Plan- Otter, Atmos Consulting (October, 2016)
- Ornithological Survey, Atmos Consulting (October, 2016)
- Ornithological Protection Plan, Atmos Consulting (October, 2016)
- Pollution Prevention Plan, Atmos Consulting (October, 2016)
- SNH Natura Appraisal (February, 2017)

Table 1. Stages of Assessment

Stages of Assessment	
Stage 1	Decide whether proposal is subject to HRA
Stage 2	Identify Natura Sites that should be considered and gather information about the Natura Sites
Stage 3	Consultation on the method and scope of the appraisal with SNH and others. Request additional information from applicant if required.
Stage 4	Screening the proposal for likely significant effects on Natura sites including mitigation measures included within the proposal
Stage 5	Screen for “in combination effects” with other plans or projects

Stage 6	Appropriate Assessment to determine effect upon conservation objectives. Preliminary conclusion about adverse effect upon the integrity of any site.
Stage 7	Consultation with SNH (and others if considered appropriate)
Stage 8	Apply additional mitigation measures, if required, via conditions or agreements to ensure that there is no adverse effect on site integrity
Stage 9	Conclusion on Integrity test
Stage 10	Regulation 49 derogation procedures. This only applies if adverse effects remain and Competent Authority still wishes to approve the application

Stages 1-5 describing the Natura sites and Screening

The proposed development is not wholly concerned with the necessary management of a European site for nature conservation and requires planning permission and so the plans must be subject to assessment under the terms of Directive 92/43/EEC.

Stages 2: Identification of Natura Sites and gathering their details

The list below is those sites that have been taken forward to screening for likely significant effects. See Appendix I for details on each site and its qualifying features.

Special Area of Conservation (SAC)

- River Spey
- Insh Marshes SAC

Special Protection Area (SPA)

- Spey-Insh Marshes SPA

Stage 3: Discussions on the method and scope of the appraisal and requests for additional information

Advice has been sought from SNH as to the potential for the proposal to impact on the River Spey SAC. SNH have determined that due to the **close** proximity of the **Raitts burn** which forms part of the River Spey SAC, the proposal could affect the SAC. The qualifying features of the River Spey SAC are Atlantic salmon, Otter, Sea Lamprey and Freshwater Pearl Mussel. Advice was provided by Sue Scoggins to Hayley Wiswell on the 13th June 2016. SNH

have also submitted a response to the application (dated 26th May 2016) and the information within this response was used to determine if there would be any Likely Significant Effects.

Additional information relevant for this HRA was requested from the applicant on the 14th June 2016 and included:

- A Construction Environmental Plan with Pollution Prevention Plan; and
- An Otter survey submitted with Species Protection Plan if found to be present within survey area

These were provided on 1st February 2017 and SNH were re-consulted and provided further advice on the impacts to Qualifying Interests of the River Spey SAC on the 8th February 2017.

Stage 4: Screening the proposal for likely significant effects

The effects identified are discussed in Table 3 below.

Table 3. Screening for LSE from Balavil Mains Farmhouse development

River Spey SAC					
Qualifying Feature Affected	Possible effect of development	Likely significant effect	Duration	Screening assessment	Screening Outcome
Otter	Pollution of watercourses through run – off during construction: siltation during ground excavation work, fuel or other chemical run-off	Pollution from chemical leakage and siltation clouding water	Temporary, during construction only	<p>Otter are using the Raitts burn for commuting, foraging and resting (Atmos Consulting, 2016)</p> <p>A pollution event in the Raitts burn could impact on otters by polluting water and food supply.</p> <p>A detailed Pollution Prevention Plan (PPP) has been provided (Atmos Consulting, 2016) that will prevent pollution of the Raitts Burn.</p>	No Effect

	Visual and noise disturbance during construction. Trapping and injury.	Disturbance of foraging habitat leading to displacement. Trapping of or injury to otter during construction	Temporary, during construction only	<p>Otter are using the Raitts burn for commuting, foraging and resting (Atmos Consulting, 2016). Physical injury or even death of individual otters. Disturbance created by noise, machinery, etc could displace otter on the burn A Species Protection Plan has been provided (Atmos Consulting, 2016) that outlines a number of measures that will prevent disturbance, trapping or injury:</p> <ul style="list-style-type: none"> • A SNH licence is required if works are carried out within 30m of the identified couch • A pre-construction survey is required • Minimised construction footprint with designated routes • Toolbox talk on otter protection given to all construction staff • Recorded checks on site machinery before operation each day • ECoW present on site or contactable at all times during construction. 	Likely Significant Effect Alone
	Disturbance due to lighting	Disturbance to foraging habitat leading to displacement	Permanent, during construction and during operational phase of development	<p>If lighting were to spill onto the Raitts burn during construction or when operational, otter could be disturbed whilst foraging/commuting at night. The Species Protection Plan (Atmos Consulting, 2016) provides two measures, adherence to these will prevent disturbance at night:</p> <ul style="list-style-type: none"> • Floodlighting will be directed away from the watercourse and other sensitive habitats • Permanent artificial lighting will be designed to not shine on the riparian corridor 	No Effect
	Loss of riparian habitat during construction	Loss of habitat leading to reduction in use for commuting and foraging	Temporary until reestablishment of riparian habitat	The species protection plan has identified that retention of riparian habitat is key to reducing disturbance to otter during construction and maintaining habitat in the long term. There are no proposals within the development plan to remove riparian habitat.	No Effect

Atlantic salmon	Pollution of watercourses through run – off during construction: siltation during ground excavation work, fuel or other chemical run-off	Pollution from chemical leakage and siltation clouding water	Temporary, during construction only	<p>The Spey Fishery Board hold data for the Raiits burn. The lower sections of the Raiits burn are heavily modified and as such the numbers of salmon using the burn are generally small. Some spawning activity adjacent to the development has been observed, but instances are few.</p> <p>Despite low numbers of salmon, a pollution event in the burn still has potential to impact on this species ability to use the burn.</p> <p>A detailed Pollution Prevention Plan (PPP) has been provided (Atmos Consulting, 2016) that will prevent pollution of the Raiits Burn.</p>	No Effect
Fresh water pearl mussel	Pollution of watercourses through run – off during construction: siltation during ground excavation work, fuel or other chemical run-off	Pollution from chemical leakage and siltation clouding water	Temporary, during construction only Temporary, during construction only	<p>Site Condition Monitoring of the River Spey for fresh water pearl mussel in 2013/2014 (the most recent survey) and the previous survey (2010) found no mussels in the section of River Spey which includes the Raiits burn confluence.</p> <p>Fresh water pearl mussel are not known to exist in the Raiits burn, and recent surveys reveal that they are not present at the confluence of the Raiits burn and River Spey. As such, an impact on this species through a pollution event in the Raiits burn is not likely.</p>	No effect
Sea lamprey	Pollution of watercourses through run – off during construction: siltation during ground excavation work, fuel or other chemical run-off	Pollution from chemical leakage and siltation clouding water	Temporary, during construction only Temporary, during construction only	<p>Surveys undertaken for Spey River Basin Management Plan (Cycle 1 1999-2005 and Cycle 2 2005-2012) did not find sea lamprey in either this reach of the River Spey or the Aviemore Burn. There are no known sites for sea lamprey upstream of Boat of Garten.</p> <p>As such, an impact on this species through a pollution event in the Raiits burn is not likely.</p>	No effect

Insh Marshes SAC					
Qualifying Feature Affected	Possible effect of development	Likely significant effect	Duration	Screening assessment	Screening Outcome
<p>Alder wood on floodplain</p> <p>Clearwater lochs with aquatic vegetation</p> <p>Very Wet Mires</p>	<p>Pollution of watercourses through run – off during construction: siltation during ground excavation work, fuel or other chemical run-off</p>	<p>Pollution from chemical leakage and siltation clouding water</p>	<p>Temporary, during construction only</p>	<p>A pollution event in the Raitts burn could cause downstream pollution, which may be detrimental to these habitats.</p> <p>A detailed Pollution Prevention Plan (PPP) has been provided (Atmos Consulting, 2016) that will prevent pollution of the Raitts Burn and therefore the Insh Marshes SAC.</p>	<p>No Effect</p>
<p>Otter</p>	<p>Pollution of watercourses through run – off during construction: siltation during ground excavation work, fuel or other chemical run-off</p>	<p>Pollution from chemical leakage and siltation clouding water</p>	<p>Temporary, during construction only</p>	<p>Otter are using the Raitts burn for commuting, foraging and resting (Atmos Consulting, 2016). The Insh marshes provides good otter habitat and supports a good population linked to that of the River Spey SAC.</p> <p>A pollution event in the Raitts burn could impact on otters by</p>	<p>No Effect</p>

				<p>polluting water and food supply in the Insh Marshes SAC.</p> <p>A detailed Pollution Prevention Plan (PPP) has been provided (Atmos Consulting, 2016) that will prevent pollution of the Raitts Burn and therefore also the Insh Marshes SAC.</p>	
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Insh marshes SPA

Qualifying Feature Affected	Possible effect of development	Likely significant effect	Duration	Screening assessment	Screening Outcome
Hen harrier	Visual and noise disturbance during construction and operation.	Disturbance to foraging	Permanent, during construction and during operational phase of development	Hen Harriers are non-breeding at this site and it there is abundant foraging habitat at the Insh Marshes, they will not be disturbed by this proposal.	No Effect

Osprey	Visual and noise disturbance during construction and operation.	Disturbance to breeding	Permanent, during construction and during operational phase of development	<p>Osprey are known to breed within 2km of the site, no old nests were found during the ornithological surveys but there is suitable habitat.</p> <p>Mitigation proposals submitted within the Ornithological Protection Plan have a requirement for a pre-construction survey for Osprey within a 500m radius of the development site. If signs of nesting are observed a Species Protection Plan will be put in place.</p>	No Effect
Spotted Crake	Visual and noise disturbance during construction and operation.	Disturbance to breeding	Permanent, during construction and during operational phase of development	This species is found in the Insh Marshes and would not be utilising the habitat around the development application area so is not at risk from disturbance.	No Effect
Whooper Swan	Visual and noise disturbance during construction and operation.	Disturbance to foraging	Permanent, during construction and during operational phase of development	This species is found wintering in and around the Insh Marshes, preferring open habitat and water to roost it is unlikely to be utilising the habitat around the development application area and therefore is not at risk from disturbance.	No Effect

Wigeon	Visual and noise disturbance during construction and operation.	Disturbance to foraging	Permanent, during construction and during operational phase of development	This species is found wintering in and around the Insh Marshes, preferring open habitat and water to roost it is unlikely to be utilising the habitat around the development application area and therefore is not at risk from disturbance.	No Effect
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Stage 5: In-combination effects

The plans and projects in Table 4 have been searched for any likely insignificant effects that may combine with those identified the proposed development.

No Minor Residual Effects were identified during the Appropriate Assessment or screening of the proposal, therefore there are no possible in-combination effects.

Stages 6–10 Assessment and Conclusions

Stage 6: Appropriate Assessment

The proposals have been screened in Stages 4 and 5. It was found that the mitigation measures proposed as part of the application were adequate to ensure no negative effect on qualifying features of the River Spey SAC, River Spey Insh marshes SPA/SAC, apart from one which was disturbance to Otter, it was considered that this could be addressed through simple mitigation alone therefore no Appropriate Assessment is required.

Stage 7: Consultation

Wider consultation of the draft report is at the discretion of the competent authority. In this case, consultation with SNH was carried out in order to decide on the scope of the assessment. Data was also provided by the Spey Fishery Board as to the numbers of Atlantic salmon using the Raitts burn. Site Condition Monitoring data of the River Spey was also used in order to ascertain the presence of fresh water pearl mussel and sea lamprey in the Raitts burn.

SNH have provided further comment on a draft of this HRA on the 3rd April 2017 and agree with the statements at Stage 6 and 7, additional mitigation in Stage 8 and final conclusion at Stage 9 and have no further comment.

Stage 8: Additional mitigation

- **The following measure must be inserted into the Otter Species Protection Plan**

‘To avoid any disturbance and therefore reduction in feeding capacity, or accidental harm to otter from construction traffic, works will be limited to daylight hours and will not start until one hour after sunrise and cease one hour before sunset.’

Stage 9: Conclusion on the integrity test

This assessment based upon the best available scientific evidence and advice offered from SNH and others has shown that, with the mitigation measures described within the Species Protection Plans and Pollution Prevention Plan, there is not a likely significant effect from the proposed development upon the qualifying features or the conservation objectives for the following Natura sites:

- River Spey SAC
- Insh Marshes SAC
- Insh Marshes SPA

We therefore conclude that the proposed development, subject to the mitigation measures identified in this appropriate assessment and applied to any consent, will not adversely affect the integrity of any of these sites.

Stage 10: Section 49 (derogation)

The conclusion that there is no adverse effect upon the integrity of any of the Natura sites covered in this report means that regulation 49 is not relevant.

Summary of residual effects

No Minor Residual Effects were identified.

References

Habitat Regulations process

Council Directive 92/43/EEC “the Habitats Directive” EEC adopted 1992

Managing Natura 2000 sites – EU communities 2000

Guidance document on Article 6(4) of the 'Habitats Directive' 92/43/EEC - EC 2007

The Conservation (Natural Habitats, &c.) Regulations 1994 (as amended)

Welsh Assembly Government TAN 5: Nature Conservation and Planning - 2009

Habitat Regulations Appraisal of Plans – Guidance for Plan Making Bodies in Scotland
SNH/DTA August 2012 (Version 2.0)

Other sources

Report of Site Condition Monitoring survey of freshwater pearl mussels in the River Spey during 2013 and 2014. SNH, Iain Sime 2014.

Laughton, R., and Burns, S. (2003). Assessment of sea lamprey distribution and abundance in the River Spey: Phase III. Scottish Natural Heritage Commissioned Report No. 043 (ROAME No. F02AC604).

Appendix I

Details of Natura 2000 sites within, or adjacent to, the proposed development site

Name of European Site	River Spey
Site Type	Special Area of Conservation
Conservation Objectives	<p>To avoid deterioration of the habitats of the qualifying species (listed below) or significant disturbance to the qualifying species, thus ensuring that the integrity of the site is maintained; and</p> <p>To ensure for the qualifying species that the following are maintained in the long-term:</p> <p>Population of the species as a viable component of the site Distribution of the species within the site Distribution and extent of habitats supporting the species Structure, function and supporting process of habitats supporting the species No significant disturbance of the species</p>
Qualifying Species	Sea lamprey (<i>Petromyzon marinus</i>) Otter (<i>Lutra lutra</i>) Atlantic salmon (<i>Salmo salar</i>) Freshwater pearl mussel (<i>Margaritifera margaritifera</i>)
Site Condition	FWPM – Unfavourable declining, 2014 Sea lamprey – Favourable maintained, 2011 Otter – Favourable maintained, 2011 Atlantic salmon – Unfavourable declining, 2011
Factors currently influencing site	In terms of development, none at present
Vulnerabilities to change/potential effects of the Plan	<ul style="list-style-type: none"> • Effects on water quality including sewerage treatment, release of minerals, contamination or other pollution and waste • Functioning of flood plains and the river system • Abstraction of water Relevant settlements: Dalwhinnie, Newtonmore, Kingussie, An Camus Mòr, Aviemore, Inverdrue, Kincaig, Insh, Boat of Garten, Carr-Bridge, Dulnain Bridge, Nethy Bridge, Grantown-on-Spey, Cromdale

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Appendix 2

Glossary of terms and abbreviations

Appropriate Assessment (AA)	The part of the Habitats Regulations Assessment process that considers the effects of an aspect of a plan upon the conservation objectives for a Natura site.
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CNPA	Cairngorms National Park Authority
CNAP	Cairngorms Nature Action Plan
Competent Authority	The decision making body required under the Habitats Directive to undertake HRA. This includes Scottish Government, National Park Authorities, SNH , SEPA or Local Authorities.
CPP	Core Paths Plan
Habitats Regulation Assessment (HRA)	The whole appraisal process for determining effects upon Natura Sites. It includes Appropriate Assessments. It is a requirement by the Habitats Directive that competent authorities carry out HRAs where a plan or project affects a Natura site.
CLDP	Draft Cairngorms National Park Local Development Plan
Likely Significant Effect	An adverse effect of the development upon a qualifying interest or conservation objective that is considered to be potentially severe enough as to threaten the integrity of the Natura site itself.
Natura Sites	Collective term for Special Protection Areas and Special Areas of Conservation
Ramsar sites	Ramsar sites are wetlands of international importance designated under the Ramsar Convention 1971. Not technically Natura sites they are however usually also SPAs. They are included within the HRA process by policy.
Special Area of Conservation (SAC)	An area designated for the protection of habitats and species. Authorised under Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (commonly called the "Habitats Directive"). One of three designation to be considered in a HRA
Special Protection Area (SPA)	An area designation for the protection of birds. Authorised by the Directive 2009/147/EC of the European Parliament and of the Council (commonly called the "Birds Directive"). One of three designation to be considered in a HRA