AGENDA ITEM 6

APPENDIX 1

2014/0356/DET

HABITATS REGULATION ASSESSMENT REPORT

Habitats Regulations Assessment consultation Draft:

02/03/2015

Waste Water Treatment Works, Dalfaber Road, Aviemore 2014/0356/DET

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 2014/0356/DET made by Mr John Smith, Enviroplan Consulting. The development is for the "change of use of former waste water treatment works to mini golf course and cafeteria kiosk with the reuse of the existing tank (infilled) for leisure use."

Background to the assessment

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

- Document - Location Plan (EX01) dated December 2013
- Document - The Wildlife Survey Unit – Protected Species Survey Report, dated December 2014
- Document - SNH Consultation Response dated 28th January 2015

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

Stage 1: Deciding whether the proposal is subject to a HRA

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 1 for details on each site and its qualifying features.

Special Area of Conservation (SAC)

River Spey

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 proximity of the Aviemore burn (approximately 25m) which forms part of the River Spey SAC and the River Spey main stem (approximately 100m), the proposal could affect the SAC. There is no connectivity (ditches or drains) to either watercourse from the proposal site but the site lies within the floodplain of the aforementioned watercourses. The qualifying features of the River Spey SAC are Atlantic salmon, Otter, Sea Lamprey and Freshwater Pearl Mussel. Otter use the Aviemore burn and the main stem of the River Spey for foraging and Atlantic salmon and Sea Lamprey are known to be present.

Currently, no Construction Method Statement or species protection plan for otter has been submitted. There has been no detail provided as to what the business hours are likely to be and if the facilities will be open during evenings, therefore requiring lighting. Therefore it cannot be concluded if the proposal will have a likely significant effect on the qualifying interests of the SAC. The screening has therefore had to take a "worst case scenario" approach.

Stage 4: Screening the proposal for likely significant effects

The effects identified are discussed in Table 3.

Table 3. Screening for LSE from Dalfaber Road Waste Water Treatment Works 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 run-off,	Pollution from chemical leakage and siltation clouding water	Temporary, during construction phase only	Although the site does not have any direct connectivity to nearby watercourses via drains or ditches, it lies within the floodplains of the Aviemore Burn and River Spey. There is potential for run-off into these watercourses during construction.	Likely significant effect alone

Atlantic Salmon	Pollution of watercourses through run – off during construction: siltation during ground excavation work, fuel run-off,	Pollution from chemical leakage and siltation clouding water	Temporary, during construction phase only	Although the site does not have any direct connectivity to nearby watercourses via drains or ditches, it lies within the floodplains of the Aviemore Burn and River Spey. There is potential for run-off into these watercourses during construction.	Likely significant effect alone
Sea Lamprey	Pollution of watercourses through run – off during construction: fuel run-off	Pollution from chemical leakage	Temporary, during construction phase only	Although the site does not have any direct connectivity to nearby watercourses via drains or ditches, it lies within the floodplains of the Aviemore Burn and River Spey. Recent surveys undertaken for SCM (Cycle1 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.	No Likely significant effect

	Siltation watercourses through run – off during construction: siltation during ground excavation work	Siltation clouding water	Temporary, during construction phase only	Although the site does not have any direct connectivity to nearby watercourses via drains or ditches, it lies within the floodplains of the Aviemore Burn and River Spey. Siltation is not considered to have an adverse effect on Sea Lamprey (Laughton & Burns 2003). Recent surveys undertaken for SCM (Cycle1 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.	No effect
Sea Lamprey	Disturbance due to lighting	Disturbance to habitat leading to displacement and prevention of migration	Permanent, during construction and during operational phase of development	No details have been provided by the applicant to suggest if construction will go ahead at night or of the site will be illuminated at night during the operational phase. If the site is lit at night, it is unlikely to illuminate the River Spey because it is 200m away from the site boundary. Recent surveys undertaken for SCM (Cycle1 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.	No Likely Significant Effect

Freshwater Pearl Mussel	Pollution of watercourses through run – off during construction: siltation during ground excavation work, fuel run-off,	Pollution from chemical leakage and siltation clouding water	Temporary, during construction phase only	Although the site does not have any direct connectivity to nearby watercourses via drains or ditches, it lies within the floodplains of the Aviemore Burn and River Spey. There is potential for run-off into these watercourses during construction. The River Spey upstream and downstream of the Aviemore Burn was surveyed in 2013 for SCM Cycle 3. There was no evidence of either adult or juvenile FWPM in this reach of the River Spey	No Likely Significant Effect
Otter	Visual and noise disturbance during construction	Disturbance to foraging habitat leading to displacement	Temporary, during construction only	Otter use the Aviemore burn for foraging. The site lies within the 30m permitted disturbance distance from the burn which means that construction traffic and works could create noise and visual disturbance to otter using the burn if construction were to go ahead in the evenings and overnight.	Likely significant effect alone
	Physical harm during construction	Trapping or injury	Temporary, during construction only	Otter use the Aviemore burn for foraging. The site lies within the 30m permitted disturbance distance from the burn which means that should pits, tunnels or piping be left open overnight; otters that wander onto the site could become trapped or injured.	Likely significant effect alone
	Disturbance due to lighting	Disturbance to foraging habitat leading to displacement	Permanent, during construction and during operational	No details have been provided by the applicant to suggest if construction will go ahead at night or of the site will be illuminated at night during	Likely significant effect alone

			phase of development	the operational phase. If lighting is directed outside of the site onto the corridor of the Aviemore burn, this could disturb otter using the burn for foraging. The Aviemore burn underpass (where the burn passes under Aviemore high street) and the adjacent footpaths are not illuminated at night. There are some small low level lights in the underpass but these are seemingly not disturbing the otter using the burn.	
	Increased recreational disturbance	Disturbance to foraging habitat leading to displacement	Permanent, during operational phase of development	An ice-skating rink is proposed during the winter months, this could potentially be open during evenings but unlikely to be late into the night. There could be increased recreational disturbance but this is unlikely to be late into the night when otter are most likely to be active.	No effect

Stage 5: In-combination effects

There are no Minor Residual Effects (Likely Insignificant Effects) identified during screening or through the Appropriate Assessment therefore there will be no 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 for one Natura sites there were likely significant effects upon the qualifying interests. Consequently the following appropriate assessment is required to ascertain the implications for the conservation objectives for each site. The affected sites identified are:

- River Spey SAC

River Spey SAC
Qualifying species and conservation status Sea lamprey (*Petromyzon marinus*) Favourable Maintained Otter (*Lutra lutra*) Favourable Maintained Atlantic salmon (*Salmo salar*) Unfavourable Recovering Freshwater pearl mussel (*Margaritifera margaritifera*) Unfavourable Recovering
Conservation objectives To avoid deterioration of the habitats of the qualifying species (listed above) or significant disturbance to the qualifying species, thus ensuring that the integrity of the site is maintained; and; To ensure for the qualifying species that the following are maintained in the long term: • 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 processes of habitats supporting the species and their hosts where relevant • No significant disturbance of the species
Is the operation likely to have a significant effect on the qualifying interest? Consider each qualifying interest in relation to the conservation objectives Sea lamprey: No effect, No likely Significant Effect Otter: Likely Significant Effect alone Atlantic salmon: Likely Significant Effect alone

Freshwater pearl mussel: No likely Significant effect

Will the development adversely affect the site's conservation objectives?

In this assessment, the implications of the planning application for the site's conservation objectives are assessed in order to answer the question: "Can it be ascertained that the proposal will not adversely affect the integrity of the site?"

The over-arching conservation objective of SACs is to avoid deterioration of the habitats of the qualifying species, or significant disturbance to the qualifying species, thus ensuring that the integrity of the sites is maintained. This over-arching conservation objective can be broken down into the following detailed elements:

To ensure that the following are maintained in the long term for the qualifying species:

1. a) Population of the species as a viable component of the sites

   b) Distribution of the species within sites

2. a) Distribution and extent of habitats supporting the species

   b) Structure, function and supporting processes of habitats supporting the species

3. No significant disturbance of the species

In-combination effects

As described at Stage 5 (screening); no in-combination effects have been identified.

Assessment against the Conservation Objectives

1a) Population of the species as a viable component of the sites

Atlantic salmon – Catastrophic accidental chemical pollution or sedimentation arising during construction may affect the population of the species locally due to toxic effects on individuals.

Otter

- Catastrophic accidental chemical pollution or sedimentation arising during construction may affect the population of the species locally due to toxic effects on individuals.
- Physical harm and loss of individuals through accidental trapping and injury of individuals during construction

The above affects can be fully mitigated for through appropriate preventative measures.

1 b) Distribution of the species within sites

Atlantic salmon - Accidental chemical pollution or sedimentation arising during construction may affect the distribution of the species through effects upon food source and supporting habitats.

Otter

- Accidental chemical pollution or sedimentation arising during construction may affect the distribution of the species through effects upon food source and supporting habitats.
- Disturbance during construction if works go ahead in the evenings and overnight – visual and noise, which may affect the distribution of the species by displacing individuals.
- Disturbance during construction and operation phase due to lighting of the site if construction works and operation phase go ahead in evenings/overnight. This could lead to a displacement of individuals, thus affecting the distribution of the species.

The above affects can be fully mitigated for through appropriate preventative measures.

2a) Distribution and extent of habitats supporting the species

Atlantic salmon - Accidental chemical pollution or sedimentation arising during construction may affect the distribution of the species through effects upon food source and supporting habitats.

Otter

- Accidental chemical pollution or sedimentation arising during construction may affect the distribution of the species through effects upon food source and supporting habitats.
- Disturbance during construction if works go ahead in the evenings and overnight – visual and noise could make habitat unsuitable, thus displacing individuals and affecting the distribution of the species
- Disturbance during construction and operation phase due to lighting of the site if construction works and operation phase go ahead in evenings/overnight. Lighting could make habitat unsuitable, thus displacing individuals and affecting the distribution of the species
- Physical harm to individuals during construction through accidental trapping and injury of individuals, thus affecting the distribution of the species.

The above affects can be fully mitigated for through appropriate preventative measures.

2b) Structure, function and supporting processes of habitats supporting the species

Atlantic salmon - Accidental chemical pollution or sedimentation arising during construction may affect the distribution of the species through effects upon food sources and supporting habitats.

Otter

- Accidental chemical pollution or sedimentation arising during construction may affect the distribution of the species through effects upon food source and supporting habitats.
- Disturbance during construction if works go ahead in the evenings and overnight – visual and noise could make habitat unsuitable, thus displacing individuals and affecting the distribution of the species
- Disturbance during construction and operation phase due to lighting of the site if construction works and operation phase go ahead in evenings/overnight. Lighting could make habitat unsuitable, thus displacing individuals and affecting the distribution of the species
- Physical harm to individuals during construction through accidental trapping and injury of individuals, thus affecting the distribution of the species.

The above affects can be fully mitigated for through appropriate preventative measures.

3) No significant disturbance of the species

Otter

- Disturbance during construction if works go ahead in the evenings and overnight – visual and noise could make habitat unsuitable, thus displacing individuals and affecting the distribution of the species
- Disturbance during construction and operation phase due to lighting of the site if construction works and operation phase go ahead in evenings/overnight. Lighting could make habitat unsuitable, thus displacing individuals and affecting the distribution of the species
- Physical harm to individuals during construction through accidental trapping and injury of individuals, thus affecting the distribution of the species.

The above affects can be fully mitigated for through appropriate preventative measures.

It is concluded that there could be an effect upon these conservation objectives and therefore additional mitigation needs to be considered.

Additional mitigation

Mitigation is required for the above effects.

1. Construction method statement

   A condition must be applied to a permission that requires a construction method statement (CMS) to be agreed with the CNPA prior to the start of construction on site. The CMS must clearly demonstrate that risks to watercourses are eliminated through application of good site management in accordance with accepted best practice and guidelines. This must be in accordance with SEPA PPG 5 "Working on or near a watercourse". In addition an unmown buffer strip should be retained around the site boundary to prevent any run-off from the site entering watercourses.

   This is a well-practised approach that is applied to many construction projects and it will effectively manage these risks.

   This would resolve the following likely significant effects:

2. Pollution and siltation of the River Spey during construction through site run-off, affecting the following qualifying features as detailed above: Atlantic salmon, otter

3. Species Protection Plan

   The CMS must incorporate measures to prevent disturbance to otter during construction by way of a species protection plan. This must include the following:

   - Pits and tunnels and pipework must be covered up overnight to prevent an otter becoming trapped
   - No lighting to be directed outside the site during construction to prevent disturbance to otter using the Aviemore burn at night time
   - Works scheduled for daylight hours only to prevent disturbance to otter using the Aviemore burn at night time

This would resolve the following likely significant effects:

- Physical harm and injury to otter
- Visual and noise disturbance to otter
- Lighting disturbance to otter (during construction)

4. Lighting

A condition must be applied to a permission that requires that no lighting is to be directed outside of the site during the operational phase of the proposal. This will ensure the proposal avoids disturbance to otter using the river and Aviemore burn at night time.

This would resolve the following likely significant effects:

- Lighting disturbance to otter (during operation)

Likely insignificant effects

No residual effects.

Conclusion on site integrity

If the mitigation states above is followed, there will not be an adverse effect upon the integrity of the River Spey SAC.

Stage 7: Consultation

Wider consultation of the draft report is at the discretion of the competent authority. In this case, it has been decided that no further consultation, other than with SNH, is required.

N.B. This is the consultation draft and will be followed up with a final response prior to determination.

Stage 8: Additional mitigation

The Appropriate Assessment details a number of mitigation measures that are considered necessary. These are summarised below:

- A Construction Method Statement to address measures to avoid pollution and siltation of watercourses and avoid disturbance to otter during construction
- Timing of construction to avoid disturbance to otter
- Restrictions on lighting during the operational phase to prevent disturbance to otter

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 additional mitigation measures, 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

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 this site.

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

There are no Minor Residual Effects.

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

Cairngorms National Park Core Paths Plan2010 – CNAP – 2010

CRAGG Visitor, visitor infrastructure and tourism Audit. Robinson 2013

Cairngorms Outdoor Access Strategy 2007-2012 – CNPA 2007

Scottish Recreation Survey, Annual Summary report 2011. CR No. 535 SNH 2012

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).

Fredricks, K. T., Swink W. S., and Montouri, L. (1996) Feasibility of using strobe lights to direct sea lamprey movement. Great Lakes Fishery Commission.

Appendix I

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

Name of European Site	River Spey SAC
Site Type	
Conservation Objectives	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 To ensure for the qualifying species that the following are maintained in the long-term: 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
Qualifying Species	Sea lamprey (*Petromyzon marinus*) Otter (*Lutra lutra*) Atlantic salmon (*Salmo salar*) Freshwater pearl mussel (*Margaritifera margaritifera*)
Site Condition	Sea lamprey (*Petromyzon marinus*) Favourable Maintained (2011) Otter (*Lutra lutra*) Favourable Maintained (2004) Atlantic salmon (*Salmo salar*) Unfavourable Recovering (2004) Freshwater pearl mussel (*Margaritifera margaritifera*) Unfavourable Recovering (2000)* *Latest report (not yet published) concludes the condition will be unfavourable
Factors currently influencing site	In terms of development, none at present
Vulnerabilities to change/potential effects of the Plan	• 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, Inverdruie, Kincraig, Insh, Boat of Garten, Carr-Bridge, Dulnain Bridge, Nethy Bridge, Grantown-on-Spey, Cromdale

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.
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