

AGENDA ITEM 6

APPENDIX 3

HABITATS REGULATIONS ASSESSMENT

Habitats Regulations Assessment consultation

2016/0089/DET Land 235m SW of Upper Duack Cottage, Nethy Bridge

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 2016/0089/DET made by the Nethy Bridge Community Council. The development is for the creation of a linking footpath between Steels Mill and Tulloch Road, Nethy Bridge.

The purpose of this footpath is to provide a link between the existing Steels Mill path and Tulloch Road, thus improving access for recreation in this area. The path lies within the Abernethy National Nature Reserve (NNR), the Cairngorms SAC, Abernethy Forest SSSI and the Abernethy Forest SPA.

The Abernethy NNR's aim is to focus recreation north of the powerline wayleave in order to reduce disturbance to areas used by capercaillie. This objective is included as part of the Abernethy/Dell Woods NNR management plan (2015-2026) under section 3 "management for people", objective VMI.2 "*promotion of the whole of the northern fringe of the NNR: Boat of Garten, Nethy Bridge, Osprey Centre, Dell Woods as the promoted visitor zone all connected by the Speyside Way (including a new trail to connect the NNR with the Speyside Way)*".

The new path will help to facilitate understanding and enjoyment of the NNR and SAC, which is an integral part of the Abernethy/Dell Woods NNR. In this sense, the proposal has public benefit, pertinent to the management of the site.

There are also targeted benefits for capercaillie (qualifying feature under the Abernethy Forest SPA) by way of encourage access in areas that are of low suitability for capercaillie.

Background to the assessment

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

- Ecological Survey and Appraisal of Steel's Mill, Tulloch Road proposed Path, for Scottish Natural Heritage, Karen Couper, October 2015
- Preliminary Management Plan for Abernethy 2015-2016
- SNH Habitat Regulation Appraisal (June 2016)
- Statement of Requirements – Construction of an all abilities path from Steel's Mill to Tulloch Road, Dell Wood, Abernethy NNR

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 SAC
Cairngorms SAC

Special Protection Area (SPA)

Abernethy Forest SPA

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

Advice was sought from SNH as to the scope of the appraisal. Additional information as to the management of the Abernethy NNR was requested. The Preliminary Management Plan for Abernethy NNR has been provided. Detail on mitigation for loss of habitat through the proposal was requested and this has also been confirmed by SNH.

Stage 4: Screening the proposal for likely significant effects

As discussed in Table 3.

Table 3. Screening for LSE from Steels Mill to Tulloch Road footpath development

Abernethy Forest SPA					
Qualifying Feature Affected	Possible effect of development	Likely significant effect	Duration	Screening assessment	Screening outcome
Capercaillie	Increased recreation in proposal area through provision of new footpath	Disturbance to lek or brood rearing area	Permanent	<p>There are no recent records of capercaillie in the proposal area. The proposal is linking adjacent paths and is close to main roads and housing. The chance of capercaillie developing a significant presence in this area is very low, given the proximity to housing and existing tracks.</p> <p>The proposal is designed to improve recreational access close to the village of Nethy Bridge, and deflect users from visiting areas south of the powerline wayleave which are more frequently used by capercaillie. This is highlighted in the 2015-2016 SNH Reserve Management Plan.</p>	No effect
	Disturbance during construction of footpath	Disturbance to lek or brood rearing area	Temporary	There are no recent records of capercaillie in the proposal area. There are no leks in proximity to the proposal area that could be potentially affected by construction activity.	No effect
Crossbill	Disturbance during construction of footpath	Disturbance to nesting or foraging birds (sudden loud noises, vibration, tree felling)	Temporary	Construction could disturb birds at a nest site or whilst foraging. Construction is proposed to take place outside of the breeding bird season, therefore there will be no chance of disturbing breeding crossbills.	No Effect

	Creation of track and loss of mature trees used for foraging	Loss of foraging habitat	Permanent	<p>Scottish crossbill is not considered to be sensitive to disturbance by people whilst recreating in woodland.</p> <p>Loss of 25 Scots pine is proposed which is unavoidable. This level of tree loss is not considered to have a significant impact on potential nesting and foraging sites due to the extent of alternative habitat nearby.</p> <p>Compensation is provided by way of removing non-native conifers and allowing natural regeneration of Scots pine – in 10-20 years this will be suitable breeding and foraging habitat for crossbill.</p>	No Effect
River Spey SAC					
Qualifying Feature Affected	Possible effect of development	Likely significant effect	Duration	Screening assessment	Screening outcome
Otter	Disturbance during construction	Disturbance to otter, injury or trapping of otter caused during construction	Temporary	<p>No holts or resting sites were found during survey work, indicating that the burn (the section within proximity to the proposal) is not used for breeding or shelter.</p> <p>Otter are known to use the Duack burn and could potentially be disturbed during construction and deflected away from the area.</p> <p>The Statement of Requirements describes the construction method and necessary mitigation. Construction of the footbridge over the Duack burn is proposed to be carried out between 2 hours after sunrise and 2 hours before sunset to</p>	No effect

				<p>avoid disturbing otter using the burn. All excavations are proposed to be covered overnight to prevent otter entering and becoming injured or trapped.</p> <p>Once completed, the bridge will not restrict otter from using the burn.</p>	
Atlantic Salmon	Disturbance during construction	Disturbance to spawning salmon	Temporary	<p>The Spey Fishery Board and SNH surveyed the Duack Burn on the 28th June 2016 and this survey noted suitable spawning habitat close to the proposed footbridge which will cross this burn.</p> <p>Construction of the footbridge will aim avoid the salmon spawning period (last week in October to the second week in December). If works need to go ahead in this time, the Spey Fishery Board will survey the Duack burn before construction and any works will take place during daylight only to avoid the night-time (when most salmon spawn).</p> <p>The above measures will ensure no significant disturbance of spawning salmon on the Duack burn in the vicinity of the proposed footbridge.</p>	No Effect
Cairngorms SAC					
Qualifying Feature Affected	Possible effect of development	Likely significant effect	Duration	Screening assessment	Screening outcome
Caledonian Forest	Loss of habitat due to construction of	Loss of habitat and therefore reduction in size of qualifying feature	Temporary	Temporary loss of 1.28ha of ground layer component of Caledonian Forest habitat, plus areas required for borrow pits. Approximately 25	Likely Significant Effect

	footpath			trees will require to be felled. Therefore there is an impact on the extent of habitats at this site.	
Green shield moss	Loss of habitat due to construction of footpath	Loss of habitat and therefore reduction in size of qualifying feature	Permanent	Loss of 1.28ha of field layer of Caledonian Forest habitat, plus areas required for borrow pits. Approximately 25 trees will require to be felled. Green shield moss is not currently known from the area that is proposed to be impacted by the development.	No effect
Otter	Disturbance during construction	Disturbance to otter, injury or trapping of otter caused during construction.	Temporary	No holts or resting sites were found during survey work. Otter are known to use the Duack burn and could potentially be disturbed during construction, though breeding holts are unlikely. Construction of the footbridge over the Duack burn is proposed to be carried out between 2 hours after sunrise and 2 hours before sunset to avoid disturbing otter using the burn.	No effect

Stage 5: In-combination effects

No Minor Residual Effects have been found for this proposal, as such, 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 some 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:

- Cairngorms SAC – Likely Significant Effect on extent of habitats

Cairngorms SAC

Qualifying species and conservation status

Caledonian Forest – Unfavourable Declining

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 the site makes an appropriate contribution to achieving favourable conservation status for the qualifying features.

Annex 1 Habitats:

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

- Extent of habitats on site
- Distribution of habitats on site
- Structure and function of habitats
- Processes supporting the habitats
- Distribution of typical species of the habitats
- Viability of typical species as component of the habitats
- No significant disturbance of typical species of the habitats

Annex 2 Species:

To avoid deterioration of the habitats of the qualifying species, or significant disturbance to the qualifying species, thus ensuring that the integrity of the site is maintained; and the site makes an appropriate contribution to achieving favourable conservation status for the qualifying features.

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

- Population of species as a viable component of site
- Distribution of species within the site

- Distribution and extent of habitat supporting the species
- Structure, function and supporting processes of habitats supporting the species
- 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.

LSE on the following qualifying features: Caledonian Forest

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

Assessment against the Conservation Objectives

1. Extent of habitats within the site

The proposal will result in the temporary loss of 1.28ha of field layer of Caledonian woodland and approximately 25 trees will require to be felled, including semi-mature and mature Scots pine. This will affect the extent of the Caledonian Forest qualifying feature. Part of the path will cross an area of woodland regeneration (Scots pine and birch). The path will not impede the woodland regeneration in this area. The path will not prevent or restrict the movement of species.

The CNPA has been advised by SNH (Keith Duncan, pers. comm) that this is only a temporary loss of qualifying feature as replacement is proposed on a 2:1 basis (see below). The footpath is required as a means of managing the Abernethy/Dell Woods NNR site for public benefit (to facilitate understanding and enjoyment of the NNR) and also to manage recreation to benefit capercaillie.

As part of the application, an area of Lodgepole pine and Noble Fir 2.56ha in size within the Cairngorms SAC is to be felled and allowed to naturally regenerate with Scots pine. This will allow for the replacement of qualifying habitat in the SAC lost through the footpath by removing an unfavourable part of the site and allowing restoration of Caledonian Forest habitat. Overall, there will be a net gain in qualifying habitat of 1.28ha. Replacement of lost field layer, through restoration of habitat is expected to take less than 5 years.

Conservation objective met.

2. Distribution of habitats within the site

The path will pass through Caledonian Forest and result in the loss of field layer of this habitat, which will be replaced over time but at a different location. However, the scale of loss is such that it will not adversely affect the distribution of this habitat across the designated site as a whole. The proposed replacement will result in a net gain of qualifying habitat, in an area which is currently unfavourable.

Conservation objective met.

3. Structure and function of habitats

The path is not considered to alter the structure and function of Caledonian Forest on the site.

Conservation objective met.

4. Processes supporting the habitats

The path will not change the processes that are integral to supporting the Caledonian Forest habitat.

Conservation objective met.

5. Distribution of typical species of the habitats

The creation of the footpath will result in the temporary loss of field layer containing typical species of the habitat, but it will not affect the distribution of these species across the site. Habitat restoration in an area of currently unfavourable non-native conifer is proposed that will result in an overall net gain of qualifying habitat.

Conservation objective met.

6. Viability of typical species as component of the habitats

The creation of the footpath will result in the temporary loss of 1.28ha of field layer containing species typical of the habitat, but it will not affect the overall viability of these species across the site.

Habitat restoration provided will restore field layer to 2.56ha of currently non-native conifer woodland, which will improve the viability of field layer plant species at that location.

Conservation objective met.

7. No significant disturbance of typical species of the habitats

1.28ha of field layer containing species typical of the Caledonian Forest habitat will be lost on a temporary basis. Habitat restoration provided will restore 2.56ha of woodland back to Caledonian Forest, thus resulting in an overall net gain of qualifying habitat.

Conservation objective met.

In-combination effects

No in-combination effects have been identified.

Conclusion

In conclusion, the public benefit of the proposal, benefits of management for capercaillie, and the provision of replacement habitat, outweigh the temporary loss of 1.28ha of Caledonian Forest. It is considered that the proposal will not adversely affect the extent of habitat on the site, thus this conservation objective can be met. Therefore, the proposal will not adversely affect the integrity of the site.

Additional mitigation

No additional mitigation is required.

Likely insignificant effects

There are no likely insignificant effects

Conclusion on site integrity

There will not be an adverse effect upon the integrity of the Cairngorms SAC

Stage 7: Consultation

Wider consultation of the draft report is at the discretion of the competent authority. SNH have been consulted for advice regarding the scope of the appraisal and the types of mitigation required.

Stage 8: Additional mitigation

No further mitigation is deemed necessary.

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 there is no likely significant effect from the proposed development upon the qualifying features or the conservation objectives for the following Natura sites:

- Abernethy SPA – No likely significant effect
- River Spey SAC – No likely significant effect
- Cairngorms SAC – Likely significant effect, but no adverse impact on integrity of the site

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.

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)

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

Name of European Site	Abernethy Forest
Site Type	Special Protection Area
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	Capercaillie, Scottish crossbill, Osprey.
Site Condition	Capercaillie: Favourable Maintained Osprey: Favourable Maintained Scottish Crossbill: Favourable Maintained From SNH SCM Report (SNH SiteLink 30/05/2016)
Factors currently influencing site	In terms of development, none at present
Vulnerabilities to change/potential effects of the Plan	Recreational disturbance to species from neighbouring development Relevant settlements: An Camus Mòr, Boat of Garten – also developing of, or extension of existing, recreational facilities.

Name of European Site	River Spey
Site Type	Special Area of Conservation
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

	<p>Distribution of the species within the site</p> <p>Distribution and extent of habitats supporting the species</p> <p>Structure, function and supporting process of habitats supporting the species</p> <p>No significant disturbance of the species</p>
Qualifying Species	<p>Sea lamprey (<i>Petromyzon marinus</i>)</p> <p>Otter (<i>Lutra lutra</i>)</p> <p>Atlantic salmon (<i>Salmo salar</i>)</p> <p>Freshwater pearl mussel (<i>Margaritifera margaritifera</i>)</p>
Site Condition	<p>Sea lamprey (<i>Petromyzon marinus</i>) Favourable Maintained</p> <p>Otter (<i>Lutra lutra</i>) Favourable Maintained</p> <p>Atlantic salmon (<i>Salmo salar</i>) Unfavourable Recovering</p> <p>Freshwater pearl mussel (<i>Margaritifera margaritifera</i>) Unfavourable Declining</p> <p>From SNH SCM Report (SNH SiteLink 30/05/2016)</p>
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 <p>Relevant settlements: Dalwhinnie, Newtonmore, Kingussie, An Camus Mòr, Aviemore, Inverdrurie, Kincaig, Insh, Boat of Garten, Carr-Bridge, Dulnain Bridge, Nethy Bridge, Grantown-on-Spey, Cromdale</p>

Name of European Site	Cairngorms SAC
Site Type	
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>Annex I Habitats:</p> <p>To ensure for the qualifying habitats that the following are maintained in the long-term:</p> <ul style="list-style-type: none"> • Extent of habitats on site • Distribution of habitats on site • Structure and function of habitats • Processes supporting the habitats • Distribution of typical species of the habitats • Viability of typical species as component of the habitats • No significant disturbance of typical species of the habitats

	<p>Annex 2 Species:</p> <p>To avoid deterioration of the habitats of the qualifying species, or significant disturbance to the qualifying species, thus ensuring that the integrity of the site is maintained; and the site makes an appropriate contribution to achieving favourable conservation status for the qualifying features.</p> <p>To ensure for the qualifying habitats that the following are maintained in the long-term:</p> <ul style="list-style-type: none"> • Population of species as a viable component of site • Distribution of species within the site • Distribution and extent of habitat supporting the species • Structure, function and supporting processes of habitats supporting the species <p>No significant disturbance of the species</p>
<p>Qualifying Species and site condition</p>	<p>Acid peat-stained lakes and ponds – Favourable Maintained Acidic scree – Favourable Maintained Alpine and subalpine heaths – Unfavourable No change Blanket bog – Unfavourable No change Bog woodland – Favourable Maintained Caledonian Forest – Unfavourable Declining Clear-water lakes or lochs with aquatic vegetation and poor to moderate nutrient levels – Favourable Maintained Dry grassland and scrublands on chalk or limestone – Unfavourable No change Dry heaths – Unfavourable No change Green shield moss (<i>Buxbaumia viridis</i>) – Favourable Maintained Hard-water springs depositing lime – Favourable Maintained High altitude plant communities associated with areas of water seepage – Unfavourable No change Juniper on heaths or calcareous grasslands – Favourable Maintained Montane acid grasslands – Unfavourable Recovering Mountain willow scrub – Unfavourable No change Otter (<i>Lutra lutra</i>) – Unfavourable Declining Plants in crevices on acid rocks – Favourable Maintained Plants in crevices on base-rich rocks – Unfavourable No change Species rich grassland with matt-grass in upland areas – Unfavourable No change Tall her communities – Favourable Maintained Very wet mires – Favourable Maintained Wet heathland – Unfavourable No change</p> <p>From SNH SCM Report (SNH SiteLink 06/07/2016)</p>
<p>Factors currently influencing site</p>	<p>None at present</p>
<p>Vulnerabilities to change/potential</p>	<p>None at present</p>

effects of the Plan	
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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.
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