

AGENDA ITEM 5

APPENDIX 2

2022/0069/DET

HABITATS REGULATIONS APPRAISAL

HABITATS REGULATIONS APPRAISAL

Planning reference and proposal information	2002/0069/DET, Construction of battery energy storage facility (49.9 MW), control building, switch room, battery storage containers, inverter containers, landscaping and associated works, land 380m west of East Croftmore, Boat of Garten. Including significant earth works to create flat site from existing sloping area, creation of new access track, 2.8m high perimeter fencing, soakaway for surface run off, inert gas fire suppression system for the battery storage units. Welfare facilities will be sealed unit chemical toilet removed for off site disposal with no running water provided.
Appraised by	Nina Caudrey, Planning Officer (Development Planning and Environmental Advice)
Date	17 August 2022
Checked by	
Date	

INFORMATION

European site details

Name of European site(s) potentially affected

1. River Spey SAC
2. Cairngorms SAC
3. Abernethy Forest SPA¹

Qualifying interest(s)

1. River Spey SAC

otter

freshwater pearl mussel

sea lamprey

Atlantic salmon

2. Cairngorms SAC

Habitats:

acid peat stained lakes and ponds

acidic scree

alpine and subalpine heaths

blanket bog

bog woodland

Caledonian forest

clear water lakes or lochs with aquatic vegetation and poor to moderate nutrient levels

dry grassland and scrublands on chalk or limestone

dry heaths

hard water springs depositing lime

high altitude plant communities associated with areas of water seepage

juniper on heaths or calcareous grasslands

montane acid grasslands

¹ The potential for connectivity with / indirect metapopulation effects on other capercaillie SPAs in Badenoch and Strathspey was considered but scoped out due to the location, type and scale of the proposed development. If the HRA for the SPA had however concluded an adverse effect on site integrity, or required mitigation, then all of the capercaillie SPAs in Badenoch and Strathspey would have been reassessed in relation to potential effects on the metapopulation.

montane willow scrub

plants in crevices on acid rocks

plants in crevices on base rocks

species rich grassland with mat grass in upland areas

tall herb communities

very wet mires often identified by an unstable quaking surface

wet heathland with cross leaved heath

Species:

green shield moss (*Buxbaumia viridis*)

otter

3. Abernethy Forest SPA

Breeding: capercaillie

dotterel

golden eagle

merlin

osprey

peregrine

Scottish crossbill

Conservation objectives for qualifying interests

I. River Spey SAC

Conservation Objective 2. To ensure that the integrity of the River Spey SAC is restored by meeting objectives 2a, 2b, 2c for each qualifying feature (and 2d for freshwater pearl mussel):

2b. Restore the distribution of **freshwater pearl mussel** throughout the site

2c. Restore the habitats supporting freshwater pearl mussel within the site and availability of food

2d. Restore the distribution and viability of freshwater pearl mussel host species and their supporting habitats

2a. Restore the population of freshwater pearl mussel as a viable component of the site

2b. Maintain the distribution of **sea lamprey** throughout the site

2c. Maintain the habitats supporting sea lamprey within the site and availability of food

2a. Maintain the population of sea lamprey as a viable component of the site

2b. Restore the distribution of **Atlantic salmon** throughout the site

2c. Restore the habitats supporting Atlantic salmon within the site and availability of food

2a. Restore the population of Atlantic salmon, including range of genetic types, as a viable component of the site

2b. Maintain the distribution of **otter** throughout the site

2c. Maintain the habitats supporting otter within the site and availability of food

2a. Maintain the population of otter as a viable component of the site

Conservation Objective 1. To ensure that the qualifying features of the River Spey SAC are in favourable condition and make an appropriate contribution to achieving favourable conservation status.

2. Cairngorms SAC

To avoid deterioration of the qualifying **habitats** thus ensuring that the integrity of the site is maintained and the site makes an appropriate contribution to achieving favourable conservation status for each of the qualifying features; and

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

- Extent of the habitat on site
- Distribution of the habitat within site
- Structure and function of the habitat
- Processes supporting the habitat
- Distribution of typical species of the habitat
- Viability of typical species as components of the habitat
- No significant disturbance of typical species of the habitat

To avoid deterioration of the habitats of the **qualifying species (otter, green shield moss)** 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 each of the qualifying features; and

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

- Distribution of the species within site
- Distribution and extent of habitats supporting the species
- Structure, function and supporting processes of habitats supporting the species
- No significant disturbance of the species
- Population of the species as a viable component of the site

3. Abernethy Forest SPA

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

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 site

Distribution and extent of habitats supporting the species

Structure, function and supporting processes of habitats supporting the species

No significant disturbance of the species

APPRAISAL

STAGE 1:

What is the plan or project?

Relevant summary details of proposal (including location, timing, methods, etc)

Over 7 months: earth works to change the sloping site into a cut flat site, surrounded by landscaped bunds (including some tree and hedge planting). Installation of surface water soakaway with perforated pipe discharging eventually into a drainage ditch/watercourse connected to the River Spey SAC, acoustic fencing and battery storage units and associated cabling. Construction of control building.

STAGE 2:

Is the plan or project directly connected with or necessary for the management of the European site for nature conservation?

No

STAGE 3:

Is the plan or project (either alone or in-combination with other plans or projects) likely to have a significant effect on the site(s)?

1. River Spey SAC

YES – there is potential for a likely significant effect on the habitats relied upon by the qualifying species of the River Spey SAC and/or their food caused by pollution from sediment release affecting water quality and smothering habitats during construction in close proximity to the eastern drainage channel/watercourse (which discharges into directly into the SAC approximately 440m downstream) and western drainage channel/watercourse (which discharges directly into the SAC approximately 210m downstream). The proposed soakaway is also proposed to eventually discharge into the eastern drainage channel/watercourse and would be constructed immediately adjoining it, increasing the risk of sediment reaching the water.

There is also potential for pollution in the event of a fire, from release of the fire suppressant entering the surface water drainage system, which is connected to the SAC.

There is **NO potential for a likely significant effect on otter from disturbance** during construction due to the proposed development site being approximately 250m inland from the SAC and so outwith the disturbance distance for River Spey SAC otter. This aspect is therefore not considered further.

2. Cairngorms SAC

NO likely significant effects on any of the qualifying interests: There would be no direct effects on the SAC habitats or species, as the development is located approximately 160m outwith the SAC, downslope with the existing electricity distribution site and B970 road in between. This, combined with the existing free-draining soils and agricultural use of the proposed development site, means that there would also be no changes to the hydrology, so there would be no indirect effects on the habitats or plant species of the SAC.

In relation to otter, the coniferous woodland found within 200m of the proposed development site is suboptimal for otter, and contains a promoted core path that runs parallel to the B970, forming a network of core and other paths in the wider area. The path is well used year round at all times of the day (including early morning and evening) by locals and visitors for walking, running and cycling (including with dogs). This makes it unappealing to otter due to existing high levels of human activity. It is therefore very unlikely that SAC natal otter holts are within the 200m disturbance distance from the proposed development site. Therefore there would be no likely significant effects on otter.

As there are no likely significant effects predicted for any of the SAC habitats or species, the SAC is not considered further.

3. Abernethy Forest SPA

NO likely significant effects on habitats supporting the qualifying interests: There would be no direct construction effects on the SPA, as the development is located approximately 160m outwith the SPA, downslope with the existing electricity distribution site and B970 road in between. This, combined with the existing free-draining soils and agricultural use of the proposed development site, means that there would also be no changes to the hydrology, so there would be no indirect effects on the habitats supporting the SPA interests.

NO likely significant effects on qualifying interests through disturbance: Of the qualifying interests, due to the habitat in the SPA in proximity to the development, all but two (capercaillie and Scottish crossbill) are unlikely to be breeding within disturbance distance of the proposed development so there would be **no likely significant effects on dotterel, golden eagle, merlin, osprey and peregrine.**

In relation to **Scottish crossbill**, as they are a canopy breeding species and the proposed development is well outside the disturbance distance, there would be **no likely significant effects** on this species from construction activity or operation of the proposed development.

For **capercaillie and Scottish crossbill**, in relation to disturbance from human activity outwith the proposed development site, there would be **no likely significant effects**. This is because it is unlikely that workers attending the battery storage site during the construction or operational phase would wish to go for walks or undertake other recreational activity. However, in the very unlikely event that any of them do, the nearest footpath in the SPA runs parallel to the B970 so it is easily accessible from the proposed development, albeit workers would have to know where it is, as it is not easily visible from the road. The path is a promoted core path, forming an network of core and other paths, which is already well used year round at all times of the day (including early morning and evening) by locals and visitors for walking, running and cycling (including with dogs). Therefore, as the number of workers who might use the path to go for a walk is minimal and the paths are already well used, there would not be a detectable change in use of the path. Therefore there would not be any potential for likely significant affects caused by disturbance through recreational activity by workers.

As there are no likely significant effects predicted for any of the habitats supporting the qualifying interest or the qualifying interests themselves, the SPA is not considered further.

STAGE 4:

Undertake an Appropriate Assessment of the implications for the site(s) in view of the(ir) conservation objectives

I. River Spey SAC

The proposed development has the potential to prevent the conservation objectives being met for the River Spey SAC. This would occur due to:

- The risk of sediment release entering the eastern drainage ditch/watercourse that flows into the River Spey SAC during construction work, due to proximity of works. This would affect the water quality relied upon by the qualifying species, and potentially smother habitats supporting the qualifying species and their food, therefore affecting distribution and population levels.
- The risk of pollution from the fire suppressant system entering the surface water drainage system and soakaway, which is connected to the SAC.

However, the Construction Environment Management Statement (CEMP) dated 13 August 2022, submitted in support of the application, should address the risk of sediment release through appropriate pollution prevention and control measures, such that the pollution risk could be minimised. The implementation of the CEMP would need to be secured by condition, should planning permission be granted.

The supporting statement (pages 10, 11) dated 10 February 2022 submitted with the application refers to the intention to use a non-toxic inert gas as the fire suppressant. Provided this is secured by condition so that the type of fire suppressant is not changed to one harmful to aquatic life, then the risk of pollution would be avoided.

STAGE 5:

Can it be ascertained that there will not be an adverse effect on site integrity?

Provided the below conditions are applied to planning permission (should permission be granted) requiring the CEMP to be implemented and the stated fire suppression system gas is used, then the conservation objectives will be met and there will not be an adverse effect on site integrity:

Condition 1*

The Construction Environment Management Statement (CEMP), dated 13 August 2022, including appendices, to be implemented in full, in particular; the tree root protection plan; the protected species mitigation measures; and the pollution prevention and control schedule measures to prevent sediment entering the nearby drainage ditch/watercourse during construction.

Reason

This is to ensure there are no adverse effects on the integrity of the River Spey SAC, to minimise adverse effects on trees, to comply with protected species legislation and minimise adverse effects on protected species and breeding birds, and to reduce the risk of sediment released during earth works reaching the nearby drainage ditch/watercourse, causing pollution.

Condition 2

The fire suppression system must use non-toxic inert gas as described in the application supporting statement (pages 10, 11) dated 10 February 2022.

Reason

This is to ensure that, should the suppression system be triggered, no pollution would enter the

site drainage system that discharges via the soakaway into a watercourse, and to avoid an adverse effect on the integrity of the River Spey SAC.

* This condition includes other interests not relevant to the HRA, but that are required to address other environmental effects. Rather than write multiple conditions that require the same thing, the conditions have been combined to require one thing: the implementation of the CEMP.