AGENDA ITEM 5

APPENDIX 2

2020/0220/DET

HABITATS REGULATIONS APPRAISAL

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Planning reference and proposal information	2020/0220/DET, Erection of bothy, installation of waste water treatment system and soakaway via perforated pipe, and formation of pedestrian/service access track, land next to Lochan nan Reamh, 515m south east of Killiehuntly Farmhouse, south of Kingussie
Appraised by	Nina Caudrey, Planning Officer
Date	30 September 2021
Checked by	
Date	

INFORMATION

European site details

Name of European site(s) potentially affected

1. **River Spey SAC**
2. **River Spey – Insh Marshes SPA**
3. **River Spey – Insh Marshes Ramsar site**

Qualifying interest(s)

1. **River Spey SAC**

   Atlantic salmon, fresh water pearl mussel, sea lamprey and otter

2. **River Spey – Insh Marshes SPA**

   Breeding: osprey, spotted crake, wigeon and wood sandpiper; non-breeding: hen harrier, whooper swan

3. **River Spey – Insh Marshes Ramsar site**

   Breeding bird assemblage (osprey, spotted crake, wood sandpiper, black headed gull); non-breeding whooper swan; mesotropic loch, flood plain fen, trophic range river/stream

Conservation objectives for qualifying interests

1. **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. River Spey – Insh Marshes 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

3. River Spey – Insh Marshes Ramsar site

There are no conservation objectives for Ramsar sites, however it is considered that by meeting the objectives for the overlapping SPA, then the integrity of the Ramsar site would also be conserved. Therefore the assessment of the SPA is deemed a surrogate for assessment of the Ramsar site.

APPRAISAL

STAGE 1:

What is the plan or project?

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

Erection of small residential (holiday let) cabin on a metal framework foundation holding it above the ground (so avoiding the need to dig foundations into the ground), installation of waste water treatment system and soakaway via perforated pipe discharging into the ground and ending at Lochan nan Reamh, formation of pedestrian/service access track which will have pipes for fresh water and electricity laid underneath it, on land next to Lochan nan Reamh, 515m south east of Killiehuntly Farmhouse, south of Kingussie. The lochan outflow goes into the River Tromie, part of the River Spey SAC. The River Tromie also flows into the River Spey – Insh Marshes SPA and Ramsar site.

The cabin structure parts will be flown by helicopter from the farmhouse to the development site. A small multipurpose tracked vehicle (like a digger) with a 1m tracked width will be used for excavations and other construction works.

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

Due to the proximity of the construction site to Lochan nan Reamh, which outflows into the River Tromie, part of the River Spey SAC, there is potential for sediment exposed during construction works to reach the SAC. Such pollution could negatively affect water quality, reducing oxygen levels and smothering habitats relied on by the qualifying interests and/or their prey species.

Otter are present at Lochan nan Reamh and due to connectivity between there and the Tromie via the outflow of the lochan, there is a risk that disturbance to SAC otter could occur during construction and operation of the bothy.

Therefore there is **potential for a likely significant effect on all qualifying interests through sediment pollution during construction**, and additionally **through disturbance for otter during construction and operation of the bothy**. Further consideration of these effects is therefore required.

The waste water treatment system will discharge into the ground via a perforated pipe soakaway,

with the pipe ending at the lochan. The soakaway pipe is over 750m from the River Spey SAC. Advice from NatureScot (Anne Elliott, email 18 March 2021) is that phosphorous levels are not of concern at this general location. So long as the treatment system and soakaway comply with building regulations, NatureScot advice (Iain Sime, email 21 June 2021) is that such systems should not have a significant effect on freshwater qualifying interests. Therefore **there would not be a likely significant effect on any of the qualifying interests from the waste water treatment system**. This aspect is therefore not considered further in this assessment.

2. River Spey – Insh Marshes SPA

3. River Spey – Insh Marshes Ramsar site

The boundary of the River Spey – Insh Marshes SPA (and Ramsar site) is approximately 3.5km downstream of the proposed development site. While there is physical connectivity via the watercourses, due to the distance providing sufficient dilution and filtering in the event of an very unlikely pollution event, there will not be a likely significant effect on any of the qualifying interests (either directly or on the habitats that they rely on) through pollution. The distance also means that there will be no disturbance of any of the species. Therefore the SPA and Ramsar site are not considered further in this assessment.

STAGE 4:

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

Effects on conservation objectives for all qualifying interests due to pollution:

The potential for sediment released during construction reaching the River Tromie is low due to the approximate 750 metres it would have to flow from the development site along the unnamed watercourse flowing out of the lochan before reaching the Tromie. Nonetheless, without appropriate mitigation measures, due to the proximity of construction works to the lochan and associated watercourse that flows into the River Tromie, there is a risk that sediment released during construction could reach the River Tromie, affecting the water quality and smothering the habitats relied upon by the qualifying interests and/or their prey species. For all the qualifying interests, this would cause all of the conservation objectives to be failed due to the potential effects of pollution. However, **the implementation of the Construction Method Statement submitted on 28 September 2021 at 1155hrs would reduce the risk of pollution to a minimal level, so that the conservation objective could still be met.**

Additional effects on otter during construction:

Disturbance during construction could have a temporary effect on the distribution of foraging otter, causing conservation objective 2a (maintain the population of otter as a viable component of the site) to fail temporarily. However, **when combined with a pre-construction survey** (see below) **the implementation of the Construction Method Statement submitted on 28 September 2021 at 1155hrs would reduce the risk of disturbance during construction to a minimal level, so that the conservation objective could still be met.**

Additional effects on otter during operation:

Survey work and site visits found that otter are using the area around the lochan and outflow watercourse for foraging. However the footprint of development is small, with number of people using the bothy being limited to 2 guests plus a carer if required. In addition, most human activity is likely to occur during daylight hours when otter are resting elsewhere. As a result, foraging otter are unlikely to be disturbed by occupation of the bothy to such an extent that conservation objectives 2a (maintain the population of otter as a viable component of the site) or 2b (maintain the distribution of otter throughout the site) would not be met due to operation of the bothy.

However, suitable resting and breeding places do exist in and around the proposed development site. As otter are a mobile species so may change their use of the area over time, **a pre-construction survey will be required to ensure that otter are not using the proposed development site and a 200m area around it for resting or breeding. If resting places or natal holts are found, a species protection plan setting out appropriate mitigation will be required** to ensure that conservation objective 2a (maintain the population of otter as a viable component of the site) is not compromised.

In conclusion, subject to a pre-construction otter survey (and species protection plan setting out appropriate measures if necessary) and the implementation of the Construction Method Statement submitted on 28 September 2021 at 1155hrs, all the conservation objectives would be met.

STAGE 5:

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

Provided the following conditions are applied as conditions of planning, then there should not be an adverse effect on site integrity:

1) **Condition:** A pre-construction survey for otter of the proposed development site and a 200m buffer in line with NatureScot guidance https://www.nature.scot/species-planning-advice-otters is carried out, with the survey results used to inform a species protection plan setting out mitigation measures appropriate to the results, submitted in writing for approval by CNPA prior to any works starting on site.

   Reason: to avoid disturbance to otter, a qualifying interest of the River Spey SAC and a European Protected Species.

2) **Condition:** The Construction Method Statement submitted to CNPA by Alastair Cassell on behalf of the applicant on 28 September 2021 at 1155hrs is implemented.

   Reason: to reduce the risk of pollution affecting the River Spey SAC and connected watercourses to a minimal level and to avoid disturbance to otter during construction.