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BY EMAIL

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Our reference: CPP154141

27 March 2019

Dear Mr Miles

Habitats Regulations Appraisal for the proposed Local Development Plan 2020

Thank you for consulting us on the above Habitats Regulation Appraisal (HRA). We have welcomed the opportunity to work closely with the Park Authority in developing the HRA.

We have some recommendations for amendment. However, we are content with the conclusions reached in the HRA, as relevant mitigation is identified and included in the proposed Local Development Plan (LDP). Once amended as below, we consider that the HRA should demonstrate that the LDP will not result in any adverse effects on the integrity of European sites affected by the policies or allocations within the LDP:

1. Recently the implications of Brexit have led to a refinement of our thinking in relation to development plans referring to 'Natura' and EU nature conservation Directives. On the assumption that Brexit goes ahead, the proposed Plan and HRA are likely to be adopted post-Brexit. To ensure they remain relevant should the UK leave the European Union, it would be better to refer to the terminology in domestic legislation, in this case The Conservation (Natural Habitats &c.) Regulations 1994 (as amended in Scotland). This is because the Regulations provide a definition of 'European sites' that encompass Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) that have been known as 'Natura sites' (as well as Ramsar sites), prescribe the HRA process, list the protected species and habitats, etc.

We therefore recommend that the following modifications are made throughout the HRA (as well as the SEA and proposed plan):

- reference to "Natura", "Natura 2000" and "Natura site(s)" is changed to '**European**' or '**European site(s)**' as appropriate;

and

- reference to the EC Birds and Habitats Directives are replaced with '**The Conservation (Natural Habitats &c.) Regulations 1994 (as amended in Scotland)**', shortened to '**the Habitats Regulations**', as appropriate;

and

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- reference to Annex I and II of the Directives is replaced with '**Schedules 2 and 4 of The Conservation (Natural Habitats &c.) Regulations 1994 (as amended in Scotland)**' as appropriate.
2. Two allocations are partially within the Cairngorms SAC. However this SAC, and the allocations falling within it, is not identified in the HRA. We therefore recommend that:
 - **information on the Cairngorms SAC is included in the HRA**
 and
 - **Glenmore T1 and T2 are scoped in to the HRA** as they both fall partly within the SAC. However our advice is that they are unlikely to experience a likely significant effect, due to the existing development and habitat types present within the allocation boundary, and the intended uses identified in the proposed Plan.
 3. Some of the protected area status information presented in Appendix I is incorrect/out of date. For example, Beinn a' Ghlo SAC, base rich fens, favourable recovered assessed August 2015, (with a number of other interests also requiring updating); etc. The data should be checked and updated where necessary. Alternatively, it is possible to download a report of site condition data from our databases via the Scotland's Environment website*. The database is updated as and when new assessments have been validated, so contains the most up to date data. Such a report could be inserted into the appendix.

*The protected area site condition monitoring data is on Scotland's Environment website via <https://www.environment.gov.scot/data/data-analysis/protected-nature-sites/>

To download:

- Click 'show details table' button on the left of the screen.
 - Users can filter for 'National Park' on the web page (Filters-Location-National Park).
 - Right click anywhere on the table displayed on the lower right hand side, then select Export-Export Table to create a spreadsheet.
 - The spreadsheet has a row for each natural feature on SAC, SPA or Ramsar sites with the latest assessed condition and assessment visit date. Another column 'Summary Condition' includes whether features have been declared as 'unfavourable but are recovering due to management'. This is where SNH have assessed a feature as unfavourable, but that corrective management is in place which we believe addresses the cause of the unfavourable condition and will eventually lead to a favourable assessment.
 - The 'About' page has a glossary and other background information.
4. The Table numbering needs to be revised, as there are two Table 3s (pages 13/14 and pages 25 – 28) and two Table 4s (pages 14 – 23, 29 – 31), with the subsequent table numbering being out of sync. This does not affect the conclusions reached in the Appropriate Assessment, but is likely to lead to confusion.
 5. Screening the Plan, Page 14. It would be beneficial to include some supporting text at this stage of the HRA explaining capercaillie metapopulations and referring to Figure 2 on page 183 (map of supporting woodlands). The text should explain, for example, that: 'Capercaillie populations within the National Park function as metapopulations, with birds moving between capercaillie SPAs using nearby woodlands. (The supporting woodlands for the Badenoch and Strathspey SPA capercaillie are shown in figure 2, page 183.)

Because of the metapopulations, an effect on one SPA means that there is an indirect effect on all the connected capercaillie SPAs. This means that all the capercaillie SPAs need to be screened in when there is an effect on any one of the SPAs.'

6. Table 4 (page 14 – 23), screening for likely significant effects. With reference to point 5 above, we recommend that the table is amended to take the metapopulation and wider SPA connectivity into account. This could be done by changing the *Connectivity* entries to 'yes – direct' and 'yes – indirect', listing all the relevant (Badenoch & Strathspey or Deeside) SPAs in the *Protected Sites* column, and identifying whether the LSE is 'disturbance to capercaillie' or a 'metapopulation effect'.
7. Section 5, Appropriate Assessment introductory text. It would be helpful to include text on page 24 explaining that the potential likely significant effects identified during the screening stage are being tested against the conservation objectives for each SAC/SPA.
8. Section 5, Appropriate Assessment introductory text. We also recommend adding a new section about capercaillie explaining that: 'Capercaillie populations within the National Park can be defined by those within Badenoch and Strathspey and those within Deeside. The Badenoch and Strathspey capercaillie SPAs are the Cairngorms, Abernethy Forest, Craigmore Wood, Kinveachy Forest and Anagach Woods SPAs (and the connected woodlands, such as those shown in figure 2 page 183, which support the metapopulation). Those within the Deeside are the Glen Tanar and the Ballochbuie SPAs. Due to the metapopulations within these two geographical areas, the potential for a direct likely significant effect on one capercaillie SPA will result in an effect on all of the metapopulation connected SPAs. However, by addressing the likely significant effects on the SPA directly affected by disturbance, indirect effects on the metapopulation and connected SPAs will, by default, also be addressed. The Appropriate Assessment therefore focuses on the SPAs that are directly affected.' Adding such text would avoid the need to make repeated assessments for indirect effects.

In addition, we recommend the addition of text explaining that: 'For capercaillie SPAs, no development allocations are proposed that would affect the conservation objectives on the quality, distribution, structure, function or supporting processes of habitats. Disturbance has been identified as the potential likely significant effect. By ensuring that there is no significant disturbance to capercaillie, the remaining conservation objectives on the population and distribution of the species will be met. Therefore the assessments presented in Tables 22 – 28 (pages 67 – 87) focus on addressing the "no significant disturbance to the species" conservation objective.'

These additions would make it clearer that the conservation objectives have been taken into account during the assessment process for capercaillie SPAs.

9. Tables 3 – 7 (pages 26 -37) and Tables 22 to 28 (pages 67 – 87). The potential for likely significant effects is identified in section 4 of the HRA. Section 5 of the HRA is part of the Appropriate Assessment, which should consider potential likely significant effects against the conservation objectives. The second column title in the tables should therefore refer to 'Effect to be considered and relevant conservation objective(s)' rather than *Potential likely significant effects*. This would avoid confusion as to what is being assessed in each section of the HRA.

For each of the effects identified, the second column of Tables 3 – 7 and 22 – 28 should then identify which conservation objective(s) are at risk from the effect that is listed.

For example, for the River Spey SAC (Table 3, pages 26 – 28), contamination has the potential to have an effect all but the 'no significant disturbance of the species' objective. We would be happy to provide the Park Authority with further advice on this for each European site.

10. Tables 23, 26, first row, second column. There is an error in the text – the first SPA referred to should be the SPA that is being assessed (rather than Kinveachy). While this does not affect the conclusions reached in the Appropriate Assessment, it may cause confusion.
11. Tables 22, 25, 28, third column, An Camas Mor (ACM) mitigation. The actions listed for the Recreation Management Plan are a reflection of those identified in the ACM HRA to avoid an adverse effect on site integrity. However, it is important to also reflect that other measures may achieve the same aims, so the list is indicative rather than prescriptive. It would be beneficial for text to be added to this effect, to avoid constraining measures to only those listed.

If you have any queries about our advice, please contact **Nina Turner, Planning Advisor (north)** in the first instance.

Yours sincerely

Debbie Greene

Operations Manager, South Highland