Appendix 4
Habitat Regulations Appraisal - Appropriate Assessment

National Park Authority Special Board Meeting
West Riverside and Woodbank House
16 September 2024

Paper for decision

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Appropriate Assessment – Endrick Water Special Area of Conservation (SAC)

Planning Application: 2022/0157/PPP

Proposal: Erection and operation of a mixed-use tourism and leisure development including refurbished tourist information building; up to 60-bedroom apartment hotel; up to 32-bedspace budget hotel, up to 104 no. self-catering holiday lodges; restoration and redevelopment/conversion of Woodbank House and attendant listed structures for up to 21 self-catering holiday apartments (subject to other necessary consents); leisure pool, waterpark, spa; restaurants, hot food cafe and retail areas; craft brewery including pub; visitor reception area and hub building; external activity areas including areas for event and performance, play, picnic and barbeque; monorail; staff service and welfare accommodation; transport infrastructure; associated access and parking; landscaping and utilities infrastructure works

Location: Land at Pier Road, Ben Lomond Way and Old Luss Road, known as West Riverside and Woodbank House (Lomond Banks), Balloch

Requirements of the Habitats Regulations

European Sites are **Special Areas of Conservation (SACs)** designated under the EC Habitats Directive to protect particular habitats and non-bird species and **Special Protection Areas (SPAs)** designated under the EC Birds Directive to protect wild birds.

Environmental protection to SACs and SPAs is addressed in Scotland through the *Conservation (Natural Habitats &c) Regulations 1994 (as amended)* which is known as the "Habitats Regulations". There have been some amendments to the Habitats Regulations to address the UK's withdrawal from the EU but these have not reduced the high level of protection given by them.

The Habitats Regulations require that:

Where an authority concludes that a development proposal is likely to have a significant effect on a European site (SPA or SAC), it must undertake an appropriate assessment of its implications for the European site in view of the site's conservation objectives.

The need for appropriate assessment extends to projects outwith the boundary of the SAC or SPA, in order to determine their implications for the interest protected within the site.

Significance Test

Regulation 48(1) of the Habitats Regulations requires the competent authority (in this case the National Park Authority) to first carry out a 'significance test'. The test for significant effects acts simply as a precautionary filter to exclude any projects which have no possible connection to the qualifying interests of the SAC or SPA. This will result in the exclusion of cases where there is no ecological connectivity to the site's qualifying interests or where the proposal will obviously not undermine the conservation objectives for the qualifying interest to which it has a connection.

Under Regulation 48 of the Habitats Regulations, the National Park Authority, as a competent authority, has a duty to:

- determine whether or not the proposal is directly connected with or necessary to SAC/SPA management for conservation; and, if not,
- determine whether the proposal is likely to have a **significant effect** on the SAC/SPA either individually or in combination with any other plans or projects; and, if so, then
- make an **appropriate assessment** of the implications (of the proposal) for the SAC/SPA in view of that site's conservation objectives.

The first bullet should only be accepted where it is part of a fully assessed, and agreed, management programme. This does not apply in the current case.

Appropriate Assessment

Habitats Regulation 48 (5) requires that *"in the light of the conclusions of the assessment, the authority shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site"*, in relation to its conservation objectives.

Agency Role

In undertaking the Appropriate Assessment, the Habitats Regulations require the National Park Authority as competent authority to have regard to the advice received from NatureScot. The National Park Authority can also have regard where relevant to the opinions of other bodies where these are material. However, the responsibility for undertaking the Appropriate Assessment rests with the National Park Authority as competent authority.

Background Information on the Endrick Water SAC

Name of European site: Endrick Water
Site Type: Special Area of Conservation (SAC)
Qualifying Interests:

SCIENTIFIC NAME	COMMON NAME
Salmo salar	Atlantic salmon
Lampetra planeri	Brook lamprey
Lampetra fluviatilis	River lamprey

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 each of the qualifying features; and

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

- Population of the species, including range of genetic types for salmon, 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

Project Information

A planning application (2022/0157/PPP) has been submitted to Loch Lomond & The Trossachs National Park Authority for the erection and operation of a mixed-use tourism and leisure development including refurbished tourist information building; up to 60-bedroom apartment hotel; up to 32-bedspace budget hotel, up to 104 no. self-catering holiday lodges; restoration and redevelopment/conversion of Woodbank House and attendant listed structures for up to 21 self-catering holiday apartments (subject to other necessary consents); leisure pool, waterpark, spa; restaurants, hot food cafe and retail areas; craft brewery including pub; visitor reception area and hub building; external activity areas including areas for event and performance, play, picnic and barbeque; monorail; staff service and welfare accommodation; transport infrastructure; associated access and parking; landscaping and utilities infrastructure works. The proposal is to be constructed on land at Pier Road, Ben Lomond Way and Old Luss Road, known as West Riverside and Woodbank House (Lomond Banks), Balloch.

Significance Test for Planning Application 2022/0157/PPP

Qualifying Features of the SAC
As listed above, the Qualifying Interests for the Endrick Water SAC are:

- Atlantic salmon *(Salmo salar)*;
- Brook lamprey *(Lampetra planeri)* and;
- River lamprey *(Lampetra fluviatilis)*.

The Conservation Objectives for the Endrick Water SAC are detailed in the background information above.

Significance Test

The application site is situated to the north of Balloch, at the southern tip of Loch Lomond. The site contains two distinct but contiguous areas, known as West Riverside and Woodbank House. The West Riverside area encompasses the southwestern bank of the River Leven at its confluence with Loch Lomond and extends westwards across Drumkinnon Wood, whereas the Woodbank House area comprises the remains of the Grade A listed Woodbank House hotel, associated structures and attendant grounds.

Although the Endrick Water SAC is situated around 9km away from the application site, adult salmon ascend the River Leven throughout the year to spawn in the Endrick Water SAC during the winter months (Nov-Jan) and smoults travel down the River Leven to reach the sea in the spring (April-May). River lamprey from the Endrick Water SAC can also access the Clyde via the River Leven but brook lamprey do not migrate to the sea. The river lamprey qualifying interest of the Endrick Water SAC is of particular importance because, unlike other populations which migrate to the sea, they remain in freshwater as adults, feeding on freshwater fish in Loch Lomond. This is the only instance of this unusual behavioural trait recorded in the UK. A precautionary approach has been applied in this appropriate assessment to consider the potential impacts on river lamprey travelling along the River Leven.

<u>Pollution</u>
Given that the proposal is situated directly adjacent to the River Leven, there is potential for pollution from the construction of the development site (e.g. silt or fuel oil) to enter the River Leven and affect the qualifying interests of the Endrick Water SAC. Salmon and lamprey both require high water quality therefore any reduction in water quality as a result of the proposal could be significant. In the short-term, if sediment is released into the River Leven during construction, this could result in the gills of salmon or lamprey being smothered, or their upstream/downstream passage impeded. It can also smother the gravels used for spawning salmon and lamprey or the areas used by juvenile fish, making them unsuitable. There is also a possible risk of contamination from the fuel and chemicals used on site, or in the longer term, pollution from the surface water drainage system.

<u>Noise/vibration</u>

The EIA Report highlights the potential use of piled foundations for the development. Whilst it is not certain that piling will be required, piling can cause underwater transmission of noise/vibration which may create barriers to fish passage and cause tissue and other physical damage to fish. As a result, there is a risk that piling activity on the site could impact on the passage of the salmon and lamprey through the River Leven and cause tissue and other physical damage to fish.

Lighting

Given the proximity of the proposal to the River Leven, there is potential for light pollution from the construction and operation of the proposed development to prevent salmon and lamprey from feeding and possibly impede fish passage.

As a consequence, the proposal is likely to have a significant effect on the qualifying interests of the SAC and an appropriate assessment is required.

Appropriate Assessment Table

Elements of project likely to give rise to significant effects on the site.	**Atlantic salmon, brook lamprey and river lamprey** As highlighted above, part of the proposal is situated immediately adjacent to the River Leven around 9km away from where the Endrick Water SAC enters Loch Lomond. Adult salmon ascend the River Leven to spawn in the Endrick Water SAC and smoults travel down the River Leven to reach the sea. River lamprey from the Endrick Water SAC can -also access the Clyde via the River Leven but brook lamprey do not migrate to the sea. <u>Noise and vibration</u> Piling for buildings causing underwater transmission of noise/vibration which may cause barriers to fish passage, cause tissue damage and other physical damage to fish. <u>Water quality deterioration</u> • Sediment runoff from construction leading to short-term deterioration or long-term loss of spawning habitat; • Pollution runoff from construction (sediment, organic or inorganic contamination) leading to sub-lethal damage or mortality; and • Pollution arising from operational drainage i.e. the release of sediment or other contaminants causing damage/mortality to fish and/or habitat over the long-term. <u>Light pollution</u> • Artificial lighting (construction and operation), which may cause disturbance to fish feeding and impede fish passage.
Describe how the integrity of the site (determined by structure and function and conservation objectives) is likely to be affected by the project (e.g. loss of habitat,	Although the proposal lies entirely outwith the boundary of the SAC and will not directly impact on the site, salmon and lamprey both require high quality water and any reduction in water quality as a result of the proposal could be significant. If sediment is released

disturbance, disruption, chemical changes, hydrological changes and geological changes etc.).	into the River Leven during construction, this could result in the gills of salmon or lamprey being smothered, or their passage impeded. It can also smother the gravels used for spawning salmon and lamprey or the areas used by juvenile fish, making them unsuitable. There is also a possible risk of contamination of the River Leven from any fuel and chemicals used on site or in the longer term, pollution from the surface water drainage. Piling can cause vibrations underwater which disturb the swim bladders of fish. This can result in physical damage to salmon as well as causing a temporary avoidance of areas which may prevent fish passage. Lamprey do not have swim bladders and scientific evidence has found that lamprey are unaffected by vibration due to the lack of a swim bladder. Salmon have been shown to swim deeper during periods of high light intensity and they ascend at night. This behaviour is also typical during less light intensive months. In the winter months they are known to feed at night. Artificial light can interfere with feeding patterns for salmon and also passage to and from spawning grounds. Lamprey have photoreceptive cells to aid migration and research shows that river lamprey actively move away from areas of high light intensity. In the few detailed studies of this topic for river lamprey Aronsuu (2015) found that artificial lighting may create illumination barriers for migration [Source: Aronsuu, K. (2015). Lotic life stages of the European river lamprey (Lampetra fluviatilis): anthropogenic detriment and rehabilitation Jyväskylä: University of Jyväskylä, 2015, 49pp.] As a consequence, the proposal could affect the following conservation objectives in the absence of mitigation: • Population of the species; • Distribution of the species within site; • No significant disturbance of the species;

Describe what mitigation measures are to be introduced to avoid any adverse effects on the integrity of the site.	There will be no adverse effect on the integrity of the SAC provided the following mitigation measures are implemented: • **Construction Environmental Management Plan (CEMP):** Prior to the commencement of the development hereby approved, a detailed Construction Environmental Management Plan (CEMP) shall be submitted to, and approved in writing by, the Planning Authority. In particular, the CEMP shall include the following: o A Pollution Prevention Plan detailing the pollution prevention measures that will be implemented to protect the water quality of the River Leven and Loch Lomond during construction works. This plan shall accord with Guidance for Pollution Prevention 5: *Works and maintenance in or near water* (February 2018) and other relevant best practice guidance. o Full details of any piling works that are to be undertaken including the methodology that is to be used, location and duration of piling activities as well as the mitigation measures that will be implemented to minimise the impacts of noise and vibration on the qualifying interests of the Endrick Water SAC. This shall include restricting any piling activities to the period outside the peak salmon migratory period (October to May inclusive), the use of “soft-start” techniques to avoid sudden unexpected disturbance and consideration of day vs night timing to minimise impacts. o Confirmation that there will be no direct or indirect lighting of the River Leven or Loch Lomond by construction lighting.

	• **Environmental Clerk of Works** - There shall be no Commencement of Development unless and until the terms of appointment of an independent Environmental Clerk of Works ("EnvCoW") by the applicant have been submitted to, and approved in writing by, the Planning Authority. The terms of appointment shall: a) impose a duty to monitor compliance with the environmental commitments provided in the EIA Report, the Construction and Environmental Management Plan approved under condition #, the Ancient Woodland Restoration Plan approved under condition #, and Bat Protection Plan approved under condition # ("the EnvCoW works"); b) require the EnvCoW to report to the nominated construction project manager, developer and Planning Authority any incidences of noncompliance with the EnvCoW works at the earliest practical opportunity; and c) require the EnvCoW to submit a monthly report to the construction project manager, developer and Planning Authority summarising works undertaken on site. • **Surface water drainage**: Prior to the commencement of the development hereby permitted, details of a scheme for the treatment of surface water for the entirety of the application site (including details of the timing of works) shall be submitted to, and approved in writing by, the Planning Authority. Such a scheme shall ensure compliance with The Water Environment (Controlled Activities) (Scotland) Regulations 2011 (CAR) General Binding Rules and incorporate the principles of The SuDS Manual (https://www.ciria.org/),

	SEPA's Regulatory Method for SuDS (WAT-RM-08), Water Assessment and Drainage Assessment Guide (Sustainable Urban Drainage Scottish Working Party) and Guidance and Sewers for Scotland (v4.0), or any subsequent revisions/equivalent publications. • **Connection to the Public Drainage Network:** The foul flows from the development hereby permitted shall connect to the Scottish Water public drainage network. These measures will ensure that adequate pollution control measures are implemented during the construction and operation of the development to protect the water quality of the River Leven/Loch Lomond and the qualifying interests of the Endrick Water SAC. • **Lighting plan**: No external lighting shall be installed on the development site until a lighting plan has been approved by the Planning Authority. This plan shall ensure that there is no direct lighting of the River Leven or Loch Lomond and include measures to minimise light spillage from the adjacent areas of the development. This will minimise any disturbance to salmon and lamprey during the operation of the development and ensure that fish passage is maintained.
In combination effects	The following consents have yet to be implemented and incorporate safeguards to protect the water quality of the River Leven, avoid direct lighting of the river and ensure that any potentially disturbing activities are undertaken outwith the peak salmon migratory period. These mitigation measures will ensure that there will be no adverse effect on the integrity of the Endrick Water SAC, individually and in-combination with the current proposal. 2021/0426/DET - Proposed installation of pontoons at the West Side of River Leven, South Of Lomond Road Bridge, Balloch.

	2021/0146/DET - Replace fixed jettys providing 50no. moorings with floating pontoons providing 48no. Moorings at River Leven, Adjacent To Riverside Boatyard, Balloch. 2017/0373/DET - Erection of 3 no. buildings (two-storey office building, slipway enclosure/workshop building, boathouse with storage level above) and installation of 2 no. pontoons at Sweeneys Cruises, Balloch Road, Balloch
Conclusion	Provided the above mitigation measures are secured via appropriately worded planning conditions, the proposal will not have an adverse effect on the integrity of the Endrick Water SAC. This conclusion is supported by NatureScot.