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Your ref: S100630/SR008

Our ref: CNS/TR

Date: 04 October 2007

Dear Fraser

**RE: A96 THREAPLAND JUNCTION IMPROVEMENTS  
CONSULTATION WITH STATUTORY ORGANISATION**

Thank you for your letter of 12<sup>th</sup> September 2007 enclosing the scoping report for the proposed junction improvements at Threaplands. Thank you also for keeping in close contact throughout the development process.

SNH has key areas of concern that will need to be addressed within the Environmental Statement (ES). However, given our discussions to date, I do consider that you should be able to address these within the ES and cover any necessary mitigation.

I am happy to discuss further any issues in detail as the ES is developed.

Loch Oire Site of Special Scientific Interest (SSSI)

Loch Oire is one of the very few lochans remaining in the hummocky glacial deposits of lowland Moray. It supports an undisturbed aquatic plant community, sedge fen and marginal carr woodland.

Maintaining the water quality within the loch is an important consideration when designing the new road drainage. Road drainage should avoid discharging directly into the loch or watercourses.

During construction, when there will be bare earth excavation, there is the risk of run-off of sediment into the loch and watercourses. A construction method statement will need to be developed that will ensure that all precautions are taken to avoid pollution either by pollutants or sediments.

Your scoping report suggests in one section ('water quality and drainage' – p23) that Loch Oire is man-made and this is not the case.



### European Protected Species (EPS) otters and bats

SNH is obliged to inform the planning authority about protected species, including European Protected Species (EPS), which may be affected by certain proposals.

The proposal could include the removal of trees that may be suitable for roosting bats and involves construction work relatively close to an existing water body that could provide habitat for otters. Construction work close to the loch could also disturb otters.

Regulations 39 and 43 of The Conservation (Natural Habitats &c.) Regulations 1994 (as amended) (the Habitats Regulations) provide full protection for certain animal and plant species. All species of bat are European Protected Species (EPS). This means it is illegal to:

- Deliberately or recklessly capture, injure or kill a bat/otter or to deliberately or recklessly
  - (i) harass a bat/otter or group of bats;
  - (ii) disturb a bat/otter while it is occupying a structure or place used for shelter or protection;
  - (iii) disturb a bat/otter while it is rearing or otherwise caring for its young;
  - (iv) obstruct access to a breeding site or resting place, or otherwise deny the bat/otter use of the breeding site or resting place;
  - (v) disturb a bat/otter in a manner that is, or in circumstances which are, likely to significantly affect the local distribution or abundance of the species to which it belongs;
  - (vi) disturb a bat/otter in a manner that is, or in circumstances which are, likely to impair its ability to survive, breed or reproduce, or rear or otherwise care for its young
  
- Damage or destroy the breeding sites or resting places of a bat/otter

Where it is proposed to carry out works which will affect EPS or their shelter/breeding places, whether or not they are present in these refuges, a licence is required from the licensing authority, in this case the Scottish Government.

SNH is only able to fully advise any decision making authority if there is sufficient information provided relating to EPS.

The survey work will need to identify any otter holts or resting places and assess whether these may be affected. It will also need to assess whether any otters using the loch could be disturbed by works. A mitigation report will need to be produced to demonstrate how these impacts can be avoided. If disturbance to either a holt or resting place or to otters themselves is likely, a licence would be required. The mitigation report will be required for the licence application. Regardless of whether a licence is ultimately required, to enable

we recommend you contact the Scottish Government who are the licensing authority for such activities, as we understand that they are considering the matter further.

Trees that will be felled should be surveyed for dreys.

#### Breeding birds

All wild birds, their nests and their eggs are protected by law. The level of protection depends on whether the bird is rare or endangered, as listed in Schedule 1 of the Wildlife and Countryside Act 1981 (as amended).

We would advise that in order to minimise impact on any breeding birds, any tree felling or scrub clearance is scheduled for outwith the breeding season i.e. carried out during the period August – March.

#### Landscape and visual

SNH has no major concerns relating to the impact of the scheme on the local landscape. SNH is likely to comment on any landscaping plan and would recommend that species of plants or trees within any planting scheme are those that are native to this part of Scotland. We would recommend against using any beech trees in a planting scheme because these are not native to this part of Scotland and are often mistakenly included in native planting schemes.

If you have any queries please do not hesitate to contact me.

Yours sincerely



Jennifer Heatley  
Area Officer  
Moray

SNH to fully advise the consulting authority on this project, this information is required at the application stage.

Likewise, in the case of bat species, any tree that could provide roosting opportunities needs to be checked for bat use and this confirmed or otherwise at the application stage. Many trees are unsuitable for bats and it is usually the case that only a small number of mature trees with holes and gnarly bark actually require to be investigated or surveyed.

### Badgers

Badgers are protected in Britain under the Protection of Badgers Act 1992. It is an offence to interfere with a sett by damaging or destroying it, obstruct access to, or any entrance of, a badger sett, or disturb a badger when it is occupying a sett.

Survey work has identified a number of badger setts within the area indicating that the area around the A96 here supports a population of badgers.

A licence from SNH will be required to carry out some of the works proposed as they have the potential to directly affect badger setts. There may also be timing restrictions on some elements of work. The proposal is to include a detailed badger mitigation plan that will assess the loss of any setts and will also look at how the scheme can include mammal underpasses. SNH welcomes this approach and is happy to continue to liaise closely over badger and licensing issues.

### Red squirrels

Red squirrels are protected under Schedules 5 and 6 of the Wildlife and Countryside Act 1981 (as amended) and the Nature Conservation (Scotland) Act 2004. This means that it is an offence to:

- intentionally kill, injure or take any red squirrel
- damage, destroy, or obstruct access to any structure or place used by a red squirrel for shelter or protection

In addition, red squirrels have been highlighted as being of biodiversity importance at a national level; they are listed in the Scottish Government's Scottish Biodiversity List and on SNH's Species Action List (species for conservation action).

SNH's understanding of the Nature Conservation (Scotland) Act 2004, which amended the Wildlife and Countryside Act 1981, is that where red squirrels dreys could be damaged or destroyed as a result of a proposed activity the various statutory defences laid out in the legislation cannot be relied upon. Furthermore, there is no provision to licence such activities for the purpose of development under the Act. However, for further clarification