

# **Draft Habitat Regulation Appraisal**

## **Dumfries and Galloway Open Space Strategy**

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# 1. Introduction

This report identifies the legislative and policy requirements for a Habitats Regulations Appraisal of the Dumfries and Galloway Open Space Strategy.

A network of sites across the European Community, known as Natura comprise of areas designated as either Special Areas of Conservation (SACs) or Special Protection Areas (SPAs). SACs are strictly protected sites designated under the EC Habitats Directive (1992) and form a European network of important, high quality conservation sites which contribute to conserving 189 habitat types and 788 identified species. SPAs are strictly protected sites classified in accordance with Article 4 of the EC Birds Directive for their rare and vulnerable birds (identified in Annex II of the Directive) and also for regularly occurring migratory species. Ramsar sites are designated wetlands of international importance. All Ramsar sites are also Natura sites and/or Sites of Special Scientific Interest and are covered by the Habitats Directive.

It is a requirement of Article 6(3) of the Habitats Directive 1992 that any plans which are likely to have a significant effect on a European site (SAC or SPA) shall be subject to an 'appropriate assessment' of its implications in relation to the site's qualifying interests and conservation objectives. A plan should not be approved until it has been ascertained that the policies and proposals it contains will not adversely affect the integrity of the sites. Proposed SACs and SPAs should also be given the same consideration.

The requirement to consider the effect on Natura sites within land use plans in Scotland is transposed into domestic law by the Conservation (Natural Habitats, &c.) Regulations 1994 as amended. These regulations are referred to in this document as the Habitats Regulations.

The Habitats Directive applies a precautionary approach to developments potentially affecting SACs and SPAs. The interest features of the Natura sites must be maintained so as to avoid deterioration of habitats and significant disturbance of species. An appropriate assessment is required where there is a probability or a risk that the plan or project will have significant effects on a site. This is in line with the ruling of the European Court of Justice in Case C-127/02 (the Waddenzee Judgement) which stated that *"any plan or project not directly connected with or necessary to the management of the site is to be subject to an appropriate assessment of its implications for the site in view of the site's conservation objectives if it cannot be excluded, on the basis of objective information, that it will have a significant effect on that site, either individually or in combination with other plans or projects"*. However it is recognised that an assessment of a spatial plan is likely by its nature to be less specific and detailed than the assessment of an individual project.

## 2. Strategy Context

The Open Space Strategy was prompted by a requirement in Scottish Planning Policy (SPP 2010) and followed the advice contained in Planning Advice Note (PAN) 65. SPP states that "Planning authorities should take a strategic and long term approach to managing the open space in their area, assessing both current and future needs and protecting all spaces which can help to meet them. Authorities should undertake an audit of the open space resource in their area and how well it meets the needs of the community" and "Using the information from the audit, authorities should prepare an open space strategy which sets out the vision for new and improved open space and addresses any deficiencies identified".

From a planning perspective, the Strategy will be used to support the Local Development Plan (LDP) which is currently at Examination stage. It will be used when implementing open space and green network policies in the LDP as well as providing support for the wider strategic and policy objectives of the Plan. The Strategy (and in particular the quantity, quality and accessibility standards it contains) will also provide the basis for the Supplementary Guidance on Open Space which will be adopted alongside the LDP. Without an up-to-date audit baseline position and related strategy, it is difficult to determine whether there is a surplus or deficit of certain types of open spaces and therefore establish what a developer is required to provide when making decisions on new development.

The Strategy will not only be used to inform planning decisions but is an important document for other Council services such as those responsible for commissioning, installing and maintaining open space and also those involved in communities, housing, education, sports, recreation, health and physical activity, outdoor access, biodiversity, flood management and climate change.

### **3. Methodology**

The following methodology has been used to carry out this HRA:-

- A list of European sites that should be considered in this appraisal was identified through GIS maps and SNH data. A full list of European sites selected and the reasons for their selection are set out in Table 1.
- Background information was gathered from the SNH website on each of the European sites identified above, including the relevant qualifying interests and conservation objectives.
- All aspects of the Dumfries and Galloway Open Space Strategy were screened, using 3 key steps, to identify any policies or proposals likely to have any significant effect on any European site (see section 6)
- In combination likely significant effects were assessed in section 7.

### **4. European sites potentially affected**

There is a total of 17 Special Areas of Conservation and 7 Special Protection Areas wholly or partly within the area covered by the Dumfries and Galloway Council. One site is designated both SAC and SPA. There are also 5 Ramsar Sites, but all of these are contained within the boundaries of Natura Sites.

All European sites potentially affected by the Dumfries & Galloway Open Space Strategy are shown in Table 1. Three areas of open space identified in the audit, at Crossmichael, Glencaple and Wigtown lie within a European site. Other areas of open space identified in the audit lie directly adjacent to European sites, or changes to these open spaces have the potential to have a likely significant effect on a European site as a result of the following:

- Changes to linked hydrological systems
- Changes that could affect mobile species
- Changes that could increase recreational pressure
- Changes that could affect physical process

**Table 1: European Sites potentially affected by D&G Open Space Strategy**

Site Name	Designation	Area ha (total site)	Qualifying Interests (Common Names)	Conservation Objectives	Site Condition	Open Spaces with potential LSE
Luce Bay and Sands	SAC	48759.28	<p><b>Annex I Habitats (primary reason for selection):</b> Coastal dune heathland Shifting dunes Dune grassland Shallow inlets and bays Shifting dunes with marram</p> <p><b>Annex I Habitats (not primary reason for selection):</b> Intertidal mudflats and sandflats Reefs Subtidal sandbanks</p> <p><b>Annex II Species (not primary reason for selection):</b> Great crested newts</p>	<p>To avoid deterioration of the qualifying habitats (listed below) 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</p> <p>To ensure for the qualifying habitats that the following are maintained in the long term:</p> <ul style="list-style-type: none"> <li>• Extent of the habitat on site</li> <li>• Distribution of the habitat within site</li> <li>• Structure and function of the habitat</li> <li>• Processes supporting the habitat</li> <li>• Distribution of typical species of the habitat</li> <li>• Viability of typical species as components of the habitat</li> <li>• No significant disturbance of typical species of the habitat</li> </ul>	<p>Favourable Maintained: Shifting dunes Shifting dunes with marram Great crested newts</p> <p>Unfavourable Declining: Coastal dune heathland Dune grassland</p> <p>Unknown: Shallow inlets and bays Intertidal mudflats and sandflats Reefs Subtidal sandbanks</p>	Sandhead Port William Drummore
River Bladnoch	SAC	300.02	<p><b>Annex II Species (primary reason for selection):</b> Atlantic Salmon</p>	To avoid deterioration of the habitats of the qualifying species (listed below) 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	Unfavourable Recovering	Kirkcowan Wigtown

Site Name	Designation	Area ha (total site)	Qualifying Interests (Common Names)	Conservation Objectives	Site Condition	Open Spaces with potential LSE
				<p>of the qualifying features; and            To ensure for the qualifying species that the following are maintained in the long term:</p> <ul style="list-style-type: none"> <li>• Population of the species, including range of genetic types, as a viable component of the site</li> <li>• Distribution of the species within site</li> <li>• Distribution and extent of habitats supporting the species</li> <li>• Structure, function and supporting processes of habitats supporting the species</li> <li>• No significant disturbance of the species</li> </ul>		
Solway Firth	SAC	43636.72	<p><b>Annex I Habitats (primary reason for selection):</b>            Atlantic salt meadows            Estuaries            Intertidal Mudflats and sandflats</p> <p>Glasswort and other annuals colonising mud and sand            Subtidal sandbanks</p> <p><b>Annex I Habitats (not primary reason for selection):</b>            Dune grassland            Coastal shingle vegetation outside the reach of waves            Reefs</p>	<p>To avoid deterioration of the qualifying habitats (listed below) 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:</p> <ul style="list-style-type: none"> <li>• Extent of the habitat on site</li> <li>• Distribution of the habitat within site</li> <li>• Structure and function of the habitat</li> <li>• Processes supporting the habitat</li> <li>• Distribution of typical species of the habitat</li> <li>• Viability of typical species as components of the habitat</li> <li>• No significant disturbance of typical species of the habitat</li> </ul>	<p>Favourable Maintained:            Coastal shingle vegetation outside the reach of waves            Glasswort and other annuals colonising mud and sand            Subtidal sandbanks</p> <p>Unfavourable No Change:            Atlantic salt meadows</p>	Annan

Site Name	Designation	Area ha (total site)	Qualifying Interests (Common Names)	Conservation Objectives	Site Condition	Open Spaces with potential LSE
			<b>Annex II Species (primary reason for selection):</b> Sea lamprey River lamprey		Unfavourable Declining: Dune grassland  Unknown: Estuaries Intertidal Mudflats and sandflats Reefs Sea lamprey River lamprey	
Castle Loch, Lochmaben	SPA	109.04	<b>Annex I Species (primary reason for selection):</b> Pink footed goose (non-breeding)	To avoid deterioration of the habitats of the qualifying species (listed below) 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: <ul style="list-style-type: none"> <li>• Population of the species as a viable component of the site</li> <li>• Distribution of the species within site</li> <li>• Distribution and extent of habitats supporting the species</li> <li>• Structure, function and supporting processes of habitats supporting the species</li> <li>• No significant disturbance of the species</li> </ul>	Unfavourable No Change	Lochmaben
Loch Ken and River Dee	SPA	769.11	<b>Annex I Species (primary reason for</b>	To avoid deterioration of the habitats of the qualifying species (listed below) or significant	Favourable Maintained	Crossmichael

Site Name	Designation	Area ha (total site)	Qualifying Interests (Common Names)	Conservation Objectives	Site Condition	Open Spaces with potential LSE
Marshes			<b>selection):</b> Greenland white-fronted goose (non-breeding) Greylag goose (non-breeding)	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: <ul style="list-style-type: none"> <li>• Population of the species as a viable component of the site</li> <li>• Distribution of the species within site</li> <li>• Distribution and extent of habitats supporting the species</li> <li>• Structure, function and supporting processes of habitats supporting the species</li> <li>• No significant disturbance of the species</li> </ul>		
Upper Solway Flats and Marshes	SPA	43636.73	<b>Annex I Species (primary reason for selection):</b> Barnacle goose Bar-tailed godwit Cormorant Curlew Dunlin Goldeneye Grey plover Great crested grebe Golden plover Knot Lapwing Mallard Oystercatcher Pink-footed goose Pintail Redshank Ringed plover	To avoid deterioration of the habitats of the qualifying species (listed below) 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: <ul style="list-style-type: none"> <li>• Population of the species as a viable component of the site</li> <li>• Distribution of the species within site</li> <li>• Distribution and extent of habitats supporting the species</li> <li>• Structure, function and supporting processes of habitats supporting the species</li> <li>• No significant disturbance of the species</li> </ul>	Favourable Maintained: Barnacle goose Cormorant Curlew Dunlin Goldeneye Grey plover Great crested grebe Golden plover Knot Lapwing Mallard Oystercatcher Pink-footed goose	Annan Gretna Glencaple



Site Name	Designation	Area ha (total site)	Qualifying Interests (Common Names)	Conservation Objectives	Site Condition	Open Spaces with potential LSE
			Scaup Shelduck Whooper swan (all non-breeding)		Pintail Redshank Ringed plover Scaup Shelduck  Unfavourable Declining: Bar-tailed godwit Whooper swan	
Castle Loch, Lochmaben	Ramsar	107.6	<b>Ramsar Qualifying Feature:</b> Pink-footed goose, (non-breeding)	N/A	Unfavourable No change	Lochmaben
Loch Ken and River Dee Marshes	Ramsar	769.11	<b>Ramsar Qualifying Features:</b> Greenland white-fronted goose, (non-breeding) Greylag goose, (non-breeding)	N/A	Favourable Maintained	Crossmichael
Upper Solway Flats and Marshes	Ramsar		<b>Ramsar Qualifying Features:</b> Knot, (non-breeding) Pink-footed goose, (non-breeding) Pintail, (non-breeding) Curlew, (non-breeding) Oystercatcher, (non-breeding) Scaup, (non-breeding) Svalbard Barnacle	N/A	Unfavourable Declining: Bar-tailed Godwit  Favourable Maintained: Knot Pink-footed Goose Pintail	Annan Gretna Glencaple

Site Name	Designation	Area ha (total site)	Qualifying Interests (Common Names)	Conservation Objectives	Site Condition	Open Spaces with potential LSE
			goose, (non-breeding) Bar-tailed godwit, (non-breeding)		Oyster-catcher Scaup Svalbard Barnacle Goose	

## 5. Screening Process

The Scottish Government requires the responsible authority to determine which, if any, elements of the plan would have a likely significant effect on any interest/feature of any European site and therefore require an appropriate assessment (AA). This applies to all Natura Sites, both SAC and SPA.

All aspects of the Open Space Strategy have been screened for potential likely significant effects on Natura Sites. An effect that could undermine the conservation objectives is considered a significant effect. The likelihood of such effects occurring was assessed on a case by case basis, taking into account the precautionary principle and the specific characteristics and environmental conditions of the site concerned.

The screening process followed three key steps:

- General policy statements, including general criteria based policies, were screened out of the appraisal as they are unlikely to have a significant effect on a European Site. General policy statements set out the strategic aspiration of the Council for a certain issue and do not relate to specific locations. A general 'criteria based' policy expresses the tests or expectations of the Council when it comes to consider particular proposals.
- Projects referred to, but not proposed by the Open Space Strategy, were screened out of the appraisal, as a Habitat Regulations Appraisal should have already been carried out by those who originally proposed such projects.
- Projects that were not likely to have a significant effect on a European site were screened out of the appraisal. The reasons for such a decision vary, but include aspects of the Open Space Strategy that are intended to protect the environment; aspects which will not themselves lead to development or other change; or aspects which make provision for change but could have no conceivable effect or only a minor residual effect on a European site.

## 6. Screening Results

Aspects of the Dumfries and Galloway Open Space Strategy were screened out as a result of being general policy statements that set out the Council's strategic aspirations for certain issues and do not refer to specific sites are listed below:

- Vision
- Action Plan (Table 4)
- Objective 1, Actions 1-3 & 5-9
- Objective 2
- Objective 3
- Objective 4, Actions 1-2

Several settlements are identified in Appendix Table A of the Open Space Strategy as requiring additional or improved open space. In the case of Annan, Crossmichael, Drummole, Glenluce, Gretna, Kirkcowan, Lochmaben, New Galloway, Port William, Sandhead and Wigtown there is the potential for a likely significant effect on a European site. However, in all these settlements, the proposed actions identify the provision of new open spaces through housing or other developments. Development sites were not proposed by the Open Space Strategy, but by the Local Development Plan, which has been subject to a separate Habitats Regulations Appraisal. These actions therefore do not require further consideration here.

Only one aspect of the Dumfries & Galloway Open Space Strategy could not be ruled out of Habitat Regulation Appraisal following the initial two key steps of the screening process, as it identifies provision for change in specific locations. This is Objective 1, Action 4: Increase the quantity of open space where needed and, in particular, prioritise addressing the lack of open space in the settlements with very low provision. The following six settlements, which have the potential to have a likely significant effect on a European site, were identified in the audit as having low provision: Annan, Drummole, Gretna, Kirkcowan, Lochmaben and Wigtown.

However, although the objective advocates expansion and improvements to open spaces in these settlements, it does not specify precisely where the expansion will take place or what the improvements will consist of. Therefore, no likely significant effect can be identified at the level of the strategy since the objective and action is too general. It is not possible to identify where, when or how the action may be implemented, or where the effects may occur.

## **7. In-combination effects**

The requirement of the Directive is to undertake an appropriate assessment of a plan if it would be likely to have a significant effect on a European Site “either individually or in combination with other plans and projects.”

As all individual aspects of the Proposed Strategy have been screened out above, because they will have no likely significant effect at all or because they are too general in nature, the Strategy does not require an in-combination assessment since all aspects clearly will also have no cumulative effect, or any cumulative effects (as for effects individually) cannot be identified.

## **8. Mitigation**

All aspects of the Proposed Dumfries and Galloway Open Space Strategy, alone or in combination, have been screened out of further appraisal. No mitigation is required.

## **9. Appropriate Assessment**

All aspects of the Proposed Dumfries and Galloway Open Space Strategy, alone or in combination, have been screened out of further appraisal. Appropriate assessment of the Proposed Plan is therefore not required.

## **10. Conclusion**

Dumfries and Galloway Council, as the plan-making body concludes that it can be ascertained by means of this Habitat Regulations Appraisal that adoption of the Dumfries and Galloway Open Space Strategy would have no adverse effect on the integrity of any Natura sites.