

TECHNICAL APPENDIX 9.2: HABITATS REGULATIONS APPRAISAL FOR WEST INVERNESS-SHIRE LOCHS SPA

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1. INTRODUCTION

1.1 Terms of Reference

1.1.1 EnviroCentre Limited has undertaken a Habitats Regulation Appraisal (HRA) to determine whether the route of the proposed 400 kV overhead line (OHL) between the proposed Coire Glas Switching Station and Fort Augustus Substation (via the proposed Loch Lundie Substation) and ancillary works (referred to as the Proposed Development) will have any adverse impact on the integrity of the West Inverness-shire Lochs Special Protection Area (SPA).

1.2 Scope of Report

1.2.1 An HRA is required to assess whether the project, alone or in combination with other projects, will have an adverse impact on the integrity of a European designated site. It is the responsibility of the competent authority to conduct the HRA. This document aims to provide the information necessary for them to carry out Stage One of the assessment (Screening) by:

- providing a description of the proposed works;
- identifying those European designated sites which are connected to and/or could potentially be affected by the proposed works;
- identifying how the proposed works may impact on the qualifying features of the designated site(s);
- considering other projects which may have “in combination” effects on the European designated sites;
- recommending the designated sites which need to be taken forward for further assessment if impacts on their qualifying features cannot be ruled out; and
- an appraisal of the proposed works and potential impacts on qualifying features scoped in for assessment.

2. METHODS

2.1 The Habitats Regulations Process

2.1.1 The HRA is a four-stage process. An important aspect of the process is that the outcome at each successive stage determines whether a further stage in the process is required. The stages are summarised in Table 2-1. It is stated within the EU guidelines that “where, without any detailed assessment at the screening stage, it can be assumed (because of the size or scale of the project or the characteristics of the national site network) that significant effects are likely, it will be sufficient to move directly to the appropriate assessment (Stage Two) rather than complete the screening assessments explained below.”

Table 2-1: Key Stags of the HRA Process

Stage 1	
Screening for Likely Significant Effect (LSE)	<ul style="list-style-type: none"> - Identify international sites in and around the project area. - Examine conservation objectives of the interest feature(s) (where available). - Review plan policies and proposals and consider potential effects on UK sites (magnitude, duration, location, extent). - Examine other plans and programmes that could contribute to ‘in combination’ effects.
	<ul style="list-style-type: none"> - If no effects likely – report no likely significant effect. - If effects are judged likely or uncertainty exists – the precautionary principle applies, proceed to Stage 2. - If following screening the project is reviewed and includes integral mitigation which will ensure no likely significant effects, then no further Appropriate Assessment needed.
Stage 2	
Appropriate Assessment (AA)	<ul style="list-style-type: none"> - Complete additional scoping work including the collation of further information on sites as necessary to evaluate impact in light of conservation objectives. - Agree scope and method of AA with the competent authority. - Consider how the project ‘in combination’ with other projects will interact when implemented (the Appropriate Assessment). - Consider how effects on integrity of the site could be avoided by changes to the project and the consideration of alternatives. - Develop mitigation measures (including timescale and mechanisms). - Report outcomes of AA including mitigation measures.
	<ul style="list-style-type: none"> - If the project will not adversely affect European site integrity proceed with plan. - If effects or uncertainty remain following the consideration of alternatives and development of mitigation proceed to Stage 3.
Stage 3	
Alternative Solutions	<ul style="list-style-type: none"> - Consider alternative solutions, delete from project or modify. - Consider if priority species/habitats affected - identify ‘imperative reasons of overriding public interest’ (IROPI), economic, social, environmental, human health, public safety (only applicable in highly exceptional circumstances).
Stage 4	
Imperative Reasons of Overriding Public Interest (IROPI)	<ul style="list-style-type: none"> - Stage 4 is the main derogation process of Article 6(4) which examines whether there are imperative reasons of overriding public interest (IROPI) for allowing a plan or project that will have adverse effects on the integrity of a UK site to proceed in cases where it has been established that no less damaging alternative solution exists. - The extra protection measures for Annex I priority habitats come into effect when making the IROPI case. Compensatory measures must be proposed and assessed. The Commission must be informed of the compensatory measures. Compensatory measures must be practical, implementable, likely to succeed, proportionate and enforceable, and they must be approved by the Minister.

2.2 Screening

2.2.1 Screening determines whether or not the project is likely to (or potentially could) have significant effects on the national site network. A list of all SACs, cSACs, SPAs and potential SPAs (pSPAs) that are within proximity to the site, or sites designated for mobile species which have the potential to be affected by the proposed

development, was compiled and the qualifying interest features noted. Following this, the key environmental conditions (conservation objectives) needed to support site integrity were detailed for each site.

2.2.2 With reference to the NatureScot guidance¹, the screening stage determines whether Appropriate Assessment is required, by:

- Determining whether a project (or plan) is directly connected with or necessary to the conservation management of any European sites;
- Describing the details of the project (or plan) proposals and other projects that may cumulatively affect any European sites;
- Describing the characteristics of relevant European sites; and
- Appraising likely significant effects of the proposed project on relevant European sites.

2.2.3 The guidance gives the following definition of LSE:

2.2.4 *“The test of significance is where a plan or project could undermine the site’s conservation objectives. The assessment of that risk (of ‘significance’) must be made in the light, amongst other things, of the characteristics and specific environmental conditions of the site concerned.”*

2.2.5 *“A likely effect is one that cannot be ruled out on the basis of objective information. The test is a ‘likelihood’ of effects rather than a ‘certainty’ of effects. Although some dictionary definitions define ‘likely’ as ‘probable’ or ‘well might happen’, in the Waddenzee case the European Court of Justice ruled that a project should be subject to Appropriate Assessment **“if it cannot be excluded, on the basis of objective information, that it will have a significant effect on the site, either individually or in combination with other plans and projects”**. Therefore, ‘likely’, in this context, should not simply be interpreted as ‘probable’ or ‘more likely than not’, but rather whether a significant effect can objectively be ruled out.”*

2.3 Screening Conclusion

2.3.1 The outcome of screening for appropriate assessment is to reach one of the following determinations:

- a) A Stage Two AA of the proposed development is required if it cannot be excluded, on the basis of objective information, that the proposed development, individually or in combination with other plans or projects, will have a significant effect on a European site.
- b) A Stage Two AA of the proposed development is not required if it can be excluded, on the basis of objective information, that the proposed development, individually or in combination with other plans or projects, will have a significant effect on a European site.

2.4 Appropriate Assessment

2.4.1 The Appropriate Assessment establishes whether or not a project’s LSE identified during the screening stage will have an adverse effect on the integrity of the affected site with regard to its conservation objectives. Based on the guidance provided by NatureScot the effects of the proposal on the designated sites’ qualifying features will be determined by:

¹NatureScot, formerly SNH guidance available at : <https://www.nature.scot/sites/default/files/2019-07/Habitats%20Regulations%20Appraisal%20of%20Plans%20-%20plan-making%20bodies%20in%20Scotland%20-%20Jan%202015.pdf> (Accesses 2022)

- Gathering information required to assess impacts (from site documents, scientific literature, EU and UK guidance on impact assessment and impact assessments from similar projects);
- Predicting the type and nature of impacts e.g. direct or indirect, short or long term;
- Assessing whether there will be adverse effects on the integrity of the site as defined by the conservation objectives and the status of the site. The precautionary principle must be applied at this stage. If it cannot be demonstrated with supporting evidence that there will be no adverse effects then adverse effects will be assumed; and
- Ascertaining if it is possible to mitigate adverse effects.

2.5 In-Combination Effects

2.5.1 Under Regulation 43(1)(a) of the Habitats Regulations 1995 (as amended) it is necessary to consider whether a plan or project is likely to have a significant effect on a national site network site “either alone or in combination with other plans or projects.”

2.5.2 These should include:

- Approved but as yet uncompleted plans or projects;
- Plans and projects for which an application has been made and which are currently under consideration but not yet approved by the competent authorities; and
- Permitted ongoing activities such as discharge consents, abstraction licences or consecutive/simultaneous maintenance activities.

3. DESCRIPTION OF THE PROPOSED DEVELOPMENT

3.1 Site Location

3.1.1 The Proposed Development is located in a rural area of the Scottish Highlands and is routed between Glengarry Forest (at a location approximately 4 km to the west of the village of Invergarry) and the settlement of Auchterawe (located approximately 2 km southwest of the town of Fort Augustus).

3.2 Project Description

- 3.2.1 The Proposed Development would primarily comprise the construction and operation of a new double circuit steel structure 400 kV OHL, totalling approximately 13 km in length. The formation of new access tracks would be required to facilitate both the construction and, in places, the maintenance of the Proposed Development. Existing tracks would be utilised where practicable, subject to upgrades where required.
- 3.2.2 From the proposed location of the Coire Glas Switching Station, the Proposed Development would travel directly through the forestry at White Bridge (part of Glengarry Forest, managed by Forestry and Land Scotland (FLS)) for approximately 2 km before crossing both the River Garry and the A87 to the northeast of Invergarry. After crossing the A87, the Proposed Development would travel through another area of FLS forestry at Munerigie Wood, to reach an elevated area of open moorland to the southwest of Loch Lundie on Aberchalder Estate. The Proposed Development would then continue in an easterly direction to the south of Loch Lundie for approximately 2 km, where it would connect into the proposed Loch Lundie Substation.
- 3.2.3 From the proposed Loch Lundie Substation, the Proposed Development would travel through Drynachan Forest (a FLS managed commercial forestry to the north of Invergarry) in a northeasterly direction for approximately 1.4 km. After exiting the northern extent of Drynachan Forest, the OHL would continue to travel in a northerly direction through an area of open moorland on Aberchalder Estate for a further 1.3 km (approximately) before entering the forestry at Inchnacardoch Forest. Within Inchnacardoch Forest the proposed OHL would continue in a northeasterly direction for a further 3.4 km (approximately), running broadly parallel to the eastern side of the existing 132 kV Fort Augustus to Fort William OHL (that will be dismantled following the commissioning of the proposed OHL).
- 3.2.4 The proposed OHL would diverge from the route of the existing 132 kV Fort Augustus to Fort William OHL at Torr Dhuin, near the settlement of Auchterawe. Here, the proposed OHL would enter the area of FLS commercial forestry to the east of Auchterawe, before changing direction, to approach the southwestern corner of the existing Fort Augustus Substation.
- 3.2.5 Works will also include the re-routeing of the 132kV Fort Augustus to Fort William OHL and the 132kV Invergarry Tee OHL to turn into the proposed new Loch Lundie substation, the installation of a new temporary OHL diversion (comprising eight temporary Trident wood poles) to enable operation of the 132kV Fort Augustus to Fort William OHL whilst it is re-routed in to the proposed Loch Lundie substation, and the decommissioning and dismantling of a section of the existing 132kV Fort Augustus to Fort William OHL between the proposed Loch Lundie Substation and the existing Fort Augustus Substation.

4. SCREENING FOR LIKELY SIGNIFICANT EFFECT

- 4.1.1 For significant effects to arise, there must be a risk enabled by having a 'source' (e.g. construction works at a proposed development site), a 'receptor' (e.g. a European site or its qualifying interests), and a pathway between the source and the receptor (e.g. mobile marine species travelling between the proposed development site and the designated site). The identification of a pathway does not automatically mean that significant effects will arise. The likelihood for significant effects will depend upon the characteristics of the source (e.g. duration of construction works), the characteristics of the pathway (e.g. what species and the number of individuals travelling between the two sites) and the characteristics of the receptor (e.g. the sensitivities of the European site and its qualifying interests).
- 4.1.2 NatureScot (2015) guidance states that sites with mobile species should be considered within the screening process where there is a significant ecological link between the designated site and the proposed development site. It also states that for developments which could increase recreational pressures on designated sites, all sites within reasonable travel distance of the development should be considered for screening. It is also necessary to consider sites which are part of the same coastal ecosystem, where the proposed development may affect coastal processes.
- 4.1.3 A component (Loch Lundie) of the West Inverness-shire Lochs SPA is located along the boundary of the Proposed Development, approximately 450 m at its closest point. Loch Garry, and important loch within the SPA complex, is located 500 m from the Proposed Development at its closest point. Therefore, this site is considered within the screening for Appropriate Assessment.

4.2 West Inverness-shire SPA Description and Features

- 4.2.1 West Inverness-shire Lochs SPA consists of Lochs Affric, Cluanie, Loyne (including Lochan Bad an Losguinn), Garry (including Loch Poulary), Lundie and Blair. For the most part, the site includes the habitats ten metres landward of the lochs' shorelines.
- 4.2.2 West Inverness-shire Lochs SPA qualifies under Article 4.1 by regularly supporting a population of European Importance of the Annex 1 species Black-throated Diver (*Gavia arctica*) (average number between 1990 and 2005 – 6.6 pairs, 3.4% of the maximum estimate of the GB population of 189 pairs).
- 4.2.3 West Inverness-shire Lochs SPA also qualifies under Article 4.2 by regularly supporting a population of European importance of the migratory species Common Scoter (*Melanitta nigra*) (average number between 1994-2000 and 2004-2005 – 7.8 pairs, 8.2% of the GB population of 95 pairs).

4.3 Conservation Objectives

- 4.3.1 The Conservation Objectives for the West Inverness-shire Lochs SPA is as follows:
- To avoid deterioration of the habitats of the qualifying species 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; and
 - No significant disturbance of the species

4.4 Likely Significant Effects

- 4.4.1 Likely significant effects during construction (including the rerouting and dismantling of the existing 132 kV OHLs) and operation could arise through disturbance to breeding Black-throated Diver and Common Scoter on Loch Lundie, potential release of pollutants into Loch Lundie leading to impacts on the structure, function and supporting processes of habitats supporting the species and through collision risk (mortality) during the operational lifespan of the Proposed Development.

4.5 Screening Conclusion

- 4.5.1 Following an examination, analysis and evaluation of the relevant information including, in particular, the nature of the Proposed Development and the likelihood of significant effects on West Inverness-shire Lochs SPA and applying the precautionary principle, it is the professional opinion of the authors that at present there is insufficient information to rule out likely (or possible) significant effects to the qualifying feature within the designated site. An AA for the proposed project will therefore be required to ascertain whether or not the proposed works would adversely impact on the integrity of West Inverness-shire Lochs SPA.

5. APPROPRIATE ASSESSMENT: WEST INVERNESS-SHIRE LOCHS SPA

5.1 Black-throated Diver

- 5.1.1 Black-throated Diver is a species listed on Annex 1 of the Birds Directive and on Schedule 1 of the Wildlife and Countryside Act 1981. It is a scarce breeding bird in Scotland, with approximately 176 pairs present in the most recent estimate.
- 5.1.2 Black-throated Diver breed on the margins of freshwater lochs and move to the sea in Autumn. The majority of birds nest on lochs with an area of less than 1km² with other lochs within their territory used for feeding.
- 5.1.3 The most recent NatureScot SPA citation states that West Inverness-shire Loch SPA supports an average of 6.6 pairs, with the latest assessment of the SPA population during site condition monitoring in 2010 is favourable maintained.
- 5.1.4 During the field surveys undertaken during the breeding period in 2022, no Black-throated Diver were present on Loch Lundie. Data obtained from the Royal Society for the Protection of Birds (RSPB) showed that a pair were present on Loch Lundie on 24th May 2022. However, they were not present on the loch during waterbody searches prior to and after this date. Therefore, it is considered that these birds were either a non-breeding pair or had failed early on another loch within the SPA complex.
- 5.1.5 Black-throated Diver are known to nest regularly on Loch Garry, predominately the western half of the loch.
- 5.1.6 No flightlines of Black-throated Diver were recorded during the vantage point surveys for the Proposed Development in 2022. It is known that birds have historically bred on Loch Garry, Loch Lundie, Loch Loyne and Loch Cluanie so it is conceivable that there are flights between these lochs (components of the West Inverness-shire SPA) and theoretically at risk of collision. It is also possible that they will fly along glens to reach other large lochs and the sea.

5.2 Common Scoter

- 5.2.1 Common Scoter is a species listed on Annex 1 of the Birds Directive and on Schedule 1 of the Wildlife and Countryside Act 1981. It is a scarce breeding bird in Scotland, with approximately 52 pairs present in the most recent estimate.
- 5.2.2 Common Scoter breed on tundra often near lakes and pools but also around lochs and move to the seas in autumn. They nest in tall vegetation with small islands often used, but sometimes a long way from freshwater.
- 5.2.3 The most recent NatureScot SPA citation states that West Inverness-shire Loch SPA supports an average of 7.8 pairs, with the latest assessment of the SPA population during site condition monitoring in 2018 is unfavourable declining.
- 5.2.4 During the field surveys undertaken during the breeding period in 2022, no Common Scoter were present on Loch Lundie. Data obtained from the Royal Society for the Protection of Birds (RSPB) also showed that no Common Scoter were present on Loch Lundie during their visit on 24th May 2022. However, a single bird was recorded on a visit on 17th May 2021.
- 5.2.5 Common Scoter are known to nest regularly on Loch Garry, predominately the western half of the loch.
- 5.2.6 No flightlines of Common Scoter were recorded during the vantage point surveys for the Proposed Development in 2022. It is known that birds do breed and have historically bred on Loch Garry and Loch Loyne which are important lochs for this species, so it is conceivable that there are flights between these component

lochs of the West Inverness-shire SPA) and theoretically at risk of collision. It is also possible that they will fly along glens to reach other large lochs and the sea.

5.3 Assessment of Potential Impacts on Conservation Objectives

Conservation Objective 1: Population of the species as a viable component of the site.

- 5.3.1 There is the potential for both Black-throated Diver and Common Scoter to breed on Loch Lundie during construction, operational and decommissioning works, as well as the eastern side of Loch Garry. Loss of birds from disturbance can have an adverse effect on breeding success and potentially impact on the population of the species as a viable component of the site.
- 5.3.2 Disturbance of the species is dealt with in *Conservation Objective 5: No significant disturbance to the species* below, and with the implementation of the mitigation described, there would be no significant disturbance to the SPA qualifying features.
- 5.3.3 The loss of the qualifying species of the SPA through collision mortality from the Proposed Development is theoretically possible.
- 5.3.4 Although no flightlines were recorded during field surveys, there is the potential for both Black-throated Diver and Common Scoter to commute between lochs within the SPA complex. The closest loch to Loch Lundie (which is the closest loch to the Proposed Development) is Loch Garry which regularly supports breeding populations of both SPA qualifying species.
- 5.3.5 If flights between component lochs does occur, then it is more likely that flights will follow the most direct and efficient route possible between lochs, utilising the lowest intervening topography. Between Loch Garry and Loch Lundie, this would be from the east end of Loch Garry to the south-west side of Loch Lundie. The Proposed Development does not cross this likely theoretical flight path. Therefore it is considered unlikely for there to be a collision risk to birds commuting between these two lochs.
- 5.3.6 In addition, it is possible that both Black-throated Diver and Common Scoter would utilise the gorge south of Glen Garry dam for commuting to larger lochs (such as Loch Lochy) and the sea.
- 5.3.7 In the area across the gorge south of Glen Garry dam, the average height of the OHL will be 52.5 m.
- 5.3.8 Line marking remains the most common and practical form of wire collision mitigation worldwide, and research shows that it can reduce bird collisions by 50-94% (evidence reviewed in Prinsen *et al.*, 2012²). Therefore, it is proposed that line marking between Towers 31 and 38 would be undertaken. Between these towers, The earth wire would be marked using reflective Bird Flight Diverters. Markers would be spaced at 5 m intervals and maintained for the duration of the operational period.
- 5.3.9 These Bird Flight Deflectors are highly reflective and are visible to birds up to 500 m away. Therefore during diurnal hours this increased visibility, along with the knowledge that Common Scoter in particular have relatively high diurnal visual acuity³, will further reduce the risk of collision.
- 5.3.10 In addition, the Bird Flight Deflectors that will be used⁴ are made from luminescent material which emit visible light for up to 16 hours after dusk. Therefore, if Common Scoter do use the gorge south of Glen Garry dam

² Prinsen, H.A.M., Smallie, J.J., Boere, G.C. & Pires, N. (Compilers). (2012). Guidelines on How to Avoid or Mitigate Impact of Electricity Power Grids on Migratory Birds in the African-Eurasian Region. AEWA Conservation Guidelines No. 14, CMS Technical Series No. 29, AEWA Technical Series No. 50, CMS Raptors MOU Technical Series No. 3, Bonn, Germany.

³ Martin, G.R. & Banks, A.N. (2023). Marine birds: Vision-based wind turbine collision mitigation. *Global Ecology and Conservation*, Volume 42,

⁴ <https://pr-tech.com/product/firefly-hw-bird-diverter/>.

during nocturnal hours the same visual stimuli will be in place as for diurnal hours and the same avoidance action will be undertaken.

5.3.11 With this mitigation measure in place, significant effects on the SPA qualifying species will be avoided and the population of the species as a viable component of the site will remain unchanged.

Conservation Objective 2: Distribution of the species within the site.

5.3.12 The potential effects of the distribution of the species within the site is conditional on the outcomes of both *Conservation Objective 1: Population of the species as a viable component of the site* and *Conservation Objective 5: No significant disturbance of the species.*

5.3.13 The conclusions from both *Conservation Objective 1* and *Conservation Objective 5* are that, with mitigation measures in place there would be no significant disturbance and no change to the population of the species as a viable component of the site.

5.3.14 Therefore, there would be no effect on the existing distribution of both qualifying features within the SPA complex.

Conservation Objective 3: Distribution and extent of habitats supporting the species.

5.3.15 All construction and dismantling work are located outwith the boundary of the West Inverness-shire Lochs SPA. Therefore, there will be no change to the existing distribution and extent of habitats supporting the SPA qualifying species.

Conservation Objective 4: Structure, function and supporting processes of habitat supporting the species

5.3.16 All construction and dismantling work are located outwith the boundary of the West Inverness-shire Lochs SPA. All works will be subject to pollution prevention controls so that potential pollution events to adjacent watercourses which could feed into Loch Lundie are avoided.

5.3.17 With this measure in place, there will be no change to the structure, function and supporting processes of habitats supporting the SPA qualifying species.

Conservation Objective 5: No significant disturbance of the species

5.3.18 NatureScot has produced a review of disturbance distances for various bird species of conservation importance⁵. For the two species that are qualifying features for the West Inverness-shire Lochs SPA, the minimum disturbance-free distances are 500-750 m for Black-throated Diver and 300-500 m for Common Scoter.

5.3.19 Prior to construction and dismantling works commencing, species-specific protection plans (see **Technical Appendix 3.2: General Environmental Management Plans (GEMPs) and Species Protection Plans (SPPs)**) will be produced, in conjunction with, and with ultimate approval from, NatureScot. These will include a disturbance risk assessment that will be used to safeguard any nesting attempt, including the implementation of exclusion zones and timing of works within the minimum disturbance-free distances described. This would also apply to required maintenance works during the operational phase of the Proposed Development.

5.3.20 The identification of potential breeding and the implementation of the protection plan will be overseen by the on-site ECoW. Should no nesting attempts be made in a particular year, works can proceed as normal.

5.3.21 With these measures in place, there would be no significant disturbance to the SPA qualifying features.

⁵ Ruddock, > & Whitfield D.P. (2007). A review of Disturbance Distances in Selected Bird Species. A report for Natural Research (projects) to Scottish Natural Heritage

5.4 Appropriate Assessment Conclusion

- 5.4.1 Following an appraisal of the potential impacts of the Proposed Development on the West Inverness-shire Lochs SPA, by adopting the mitigation described, and detailed in section 6, the works will not have a significant effect on the integrity of the West Inverness-shire Lochs SPA.

6. MITIGATION

6.1.1 The following mitigation will be employed to avoid and minimise the risk impacting on the integrity of the West Inverness-shire Lochs SPA:

- prior to construction and dismantling works commencing, species-specific protection plans (**see Technical Appendix 3.2: General Environmental Management Plans (GEMPs) and Species Protection Plans (SPPs)**) will be produced, in conjunction with, and with ultimate approval from, NatureScot. These will include a disturbance risk assessment that will be used to safeguard any nesting attempt, including the implementation of exclusion zones and timing of works within the minimum disturbance-free distances described. This would also apply to required maintenance works during the operational phase of the Proposed Development;
- line marking between Towers 31 and 38 would be undertaken. Between these towers, the earth wire would be marked using reflective Bird Flight Diverters. Markers would be spaced at 5 m intervals and maintained for the duration of the operational period; and
- pollution prevention controls in place for all works.