



## **For decision**

**Title: Code Of Conduct Addition**

**Prepared by: David Cameron, Deputy Chief Executive and Director of Corporate Services**

### **Strategic context**

1. The Park Authority board agreed its Code of Conduct at its meeting on 25 March 2022, based on the model code for public bodies produced by the Standards Commission for Scotland. Following approval by Scottish Ministers the Code was adopted by the Park Authority in May 2022.
2. Officers have identified that the model code for public bodies omitted specific coverage for dealing with quasi-judicial and regulatory activities and decision making, which is an important aspect of the Park Authority's operations. This paper seeks to resolve that situation, proposing the addition of a section to the Park Authority's Code of Conduct covering such activities.

### **Purpose**

3. The paper seeks to update the Park Authority's Code of Conduct with additions based on the provisions for quasi-judicial and regulatory activities and decision making approved by the Standards Commission for Scotland in the model code for councillors. The paper seeks to ensure the Park Authority's code of conduct is appropriate to the range of activities and decisions undertaken by Park Authority members using provisions already approved by the Standards Commission and supported by existing guidance.

### **Recommendations**

4. The Board is asked to:
  - a) Approve the proposed additional provisions set out in Annex 1 to this paper for inclusion in the Park Authority's Code of Conduct.



- b) Agree the submission of the updated Code of Conduct to Scottish Ministers for approval.

## **Strategic policy consideration**

5. Good governance and clear, effective supporting policies and arrangements are an essential underpinning for the work of the Park Authority. Having identified a gap in the provisions of the model code as they relate to the operation of the Park Authority, it is imperative that the Code of Conduct is amended to provide clear coverage of governance expectations for all forms of activity and decision making in which the board may engage. Action covered by this paper will ensure the quasi-judicial and regulatory decisions are more fully and specifically covered by the Park Authority's Code of Conduct, one of the board's key foundations of its governance arrangements.

## **Stakeholder engagement**

6. The Standards Commission for Scotland has been involved in the development of the proposed approach set out in this paper. Senior officers at the Standards Commission are supportive of the proposals set out in this paper.
7. Colleagues at Loch Lomond and the Trossachs National Park Authority were also alerted to the gap in provisions of the current Code of Conduct and have also acted to address the gap in specific provisions.

## **Strategic risk management**

8. While this matter does not address any strategic risks currently recognised, a failure to address the issue identified would create a risk that our governance processes do not adequately cover our range of activities and decision-making responsibilities.

## **Implications**

9. There is no resource implications associated with the proposals set out in this paper.
10. The Park Authority's governance and decision making has been operating on the assumption that the matters covered by these proposals have continued to be in



place. Provision had been made in the Park Authority's previous Code of Conduct and our underpinning procedures and arrangements continue to support good governance. The addition to the Code proposed will cover a gap in this document, while enhancing and clarifying the specific coverage of provisions and expectations

### **Success measures**

11. This process will be completed on approval of the revised Code of Conduct by Scottish Ministers and subsequent confirmation to members from the Standards Officer that the new Code is in place.

### **Supporting information**

12. The Park Authority's current Code of Conduct is available on our website at [Model Code of Conduct for Members of Devolved Public Bodies \(cairngorms.co.uk\)](https://www.cairngorms.co.uk)
13. The proposed addition to the Code, which will follow directly after point 6.8b of the current code and prior to the start of "Annex A: Breaches of the Code" is set out in full in Annex 1 to this paper.

**David Cameron,**  
**Deputy CEO and Director of Corporate Service**



## **Annex 1**

### **Taking Decisions on Quasi-Judicial and Regulatory Matters**

7.1 I need to be especially vigilant when I am making a decision on a quasi-judicial or regulatory application. For these applications, I need to ensure there is a proper and fair hearing of the application and I must avoid any impression of bias in the whole decision-making process.

7.2 I may deal with many types of quasi-judicial or regulatory applications. Depending on the type of application that is made, there will often be a formal, statutory decision-making process for its consideration and outcome. There may also be formal legal routes to challenge decisions made on these applications and for this reason I must be aware that my own personal responsibility to ensure a proper and fair hearing has wider consequences for the National Park Authority's reputation and financial liabilities in the event of any challenge.

7.3 Quasi-judicial or regulatory decisions typically involve:

- a) Planning
- b) Access
- c) Licensing
- d) Byelaws and other regulatory activities
- e) Statutory enforcement procedure
- f) Staffing and employment issues within the Board's remit
- g) Statutory appeals and consents

The above list is provided to me only for guidance and is not exhaustive. If I have any doubt as to whether or not my involvement involves a quasi-judicial or regulatory matter, I will seek the advice of the National Park Authority's Monitoring Officer.

### **Quasi-Judicial and Regulatory Matters**

7.4 In dealing with these applications, I will:



- a) Throughout my involvement with the entire application process act fairly and be seen to act fairly.
- b) Declare interests where required in terms of Section five of this Code and leave the meeting until the matter has been determined.
- c) Deal fairly and impartially with all parties involved in the application.
- d) Tell those who may be seeking to influence me out with the proper decision-making process that I will not formulate an opinion on any particular application until all information is available to all decision-makers and has been duly considered at the relevant meeting.
- e) Take into account professional advice given to me by National Park Authority employees.
- f) Seek advice from the relevant National Park Authority employee if I am in doubt as to any material or relevant considerations.

7.5 In dealing with such applications, I will not:

- a) Pre-judge or demonstrate bias or be seen to pre-judge or demonstrate bias.
- b) Indicate or imply support for or opposition to an application nor indicate my voting intention prior to the appropriate meeting where the application will be considered.
- c) In advance of the decision-making meeting, attempt to influence employees to adopt a particular position as that would imply that I am prejudiced in my decision-making.
- d) Lobby other Board Members who may be dealing with the application.
- e) Express any view on the application before the appropriate meeting where the application will be considered. If I do so I will not participate in any aspect of the decision-making nor vote on the application.
- f) Formulate my conclusions on an application until all available information is to hand and has been duly considered by me at the meeting where the application will be considered.
- g) Express any indicative or provisional views in the course of my involvement in any aspect of the application.
- h) Otherwise act improperly or do anything which could reasonably create a perception that I have acted improperly.



## **Policy and Strategy**

7.6 My role in policy and strategic issues may have a very wide relevance to my national park area. For example, I have a key role in establishing policies for the benefit of my national parks area and I am fully entitled to express my genuinely held views or to advocate proposals for the adoption of key guidance. It is entirely appropriate that I can express my views on matters of such general importance to my national park area.

7.7 When I am being asked to develop a policy or feed into any National Park Partnership Plans and / or a Local Development Strategy that forms the framework under which individual applications may subsequently be decided, I understand that I can discuss or debate these items of policy or strategy. However, I will only take into account material considerations affecting the policy or strategic issue and will have regard to the requirement for the adoption of the policy or strategy to be based on facts and evidence. I understand that once a formal process around policy or strategy development has started then a quasi-judicial or regulatory process covered by these provisions should be assumed to be underway.

7.8 For policy and strategic issues under which individual applications may subsequently be decided, I will:

- a) Be able to express my views;
- b) Be able to advocate proposals that I consider to be of benefit to my national park area;
- c) Have regard to the evidence-base behind the formulation of the policy or strategy in question.

I will not:

- d) Do anything or be motivated to do anything that is connected or linked in any way with my personal involvement in a policy or strategic issue;
- e) Express any view that suggests I have a closed mind on the policy or strategic issue regardless of any material considerations affecting that issue.

## **Representation**

7.9 If I intend to be involved in the decision-making for any quasi-judicial or regulatory application, I will not:

- a) Organise support for or opposition to the application in any way;



- b) Represent or appear to represent individuals or groups who are seeking to make representations for or against an application; or
- c) Compromise myself or the National Park Authority by creating a perception of a conflict of interest.

7.10 In circumstances where I am a member of the Board or Committee as a decision maker but have been involved in organising support for or opposition to an application, I will:

- a) Declare an interest in the matter, and
- b) Withdraw from the meeting without participating in the consideration of the matter.

## **Site Visits**

7.11 In respect of any site visits that have been decided upon or agreed by the Board or Committee as a stage in the consideration of the application, I will

- a) Follow the National Park Authority's procedures for such visits as set out by the National Park Authority and that with regard to any legislative requirements or notes of guidance or practice;
- b) Remember that such site visits are part of the decision-making process and as such are formal in nature and may have procedures as set out by the National Park Authority.

## **Enforcement**

7.12 In my role, I may become aware whether by complaint or by direct knowledge of the need for National Park Authority intervention by way of appropriate enforcement action. In this event, I will refer the matter for investigation to the appropriate service of the National Park Authority. I will also:

- a) Advise all subsequent enquirers to deal directly with the relevant employee of the National Park Authority;
- b) Be able to request factual information about the progress of the matter from the relevant employee.

I will not:

- c) Lobby for a particular outcome;



- d) Get involved in the operational detail of any enforcement actions which are subsequently taken by the National Park Authority