

Date:		Date:	
Issue:	Policy 6 – Biodiversity		
Objector(s):		Objection ref(s):	
1	Muir Homes Ltd		038e
2	Scottish Council for National Parks		434d
3	Badenoch and Strathspey Conservation Group		400f(f)

Reporter	Mr Hugh Begg
Procedure	Informal hearing

1.0 Overview

- 1.1 This statement sets out the CNPA's position in relation to objections raised to the Deposit Local Plan, as modified, in respect of Policy 6 – Biodiversity and supplements the response made to those objections by the CNPA in its report to Committee (CD7.3, 4 and 5). It recommends no further modification is made to the Plan in respect of this policy.

2.0 Provision of the Local Plan

- 2.1 Policy 6 Biodiversity, as modified, ensures that all new development would not have an adverse impact on the habitats or species of the area - as identified in various Biodiversity Action Plans. The policy is intended to protect, conserve and enhance natural and semi-natural areas where it is known or evidence indicates that identified habitats, networks and species are present, in doing so it directs development away from these sensitive sites or where this is not possible, provides suitable mitigation, management or compensatory measures. The policy also places a requirement upon the developer to undertake a comprehensive survey to assess the likely impacts and effects caused by the development.
- 2.2 The policy is intended to reflect the 1st aim of the National Park: to conserve and enhance the natural and cultural heritage of the area and also to ensure that all development is in line with the requirements of the Nature Conservation (Scotland) Act 2004 (CD1.12) which places a duty on all public bodies, including planning authorities, to further the conservation of biodiversity. The policy is not intended to hamper appropriate development but to ensure adequate consideration of biodiversity and natural environment is accounted for, in proposals, as demonstrated within the criteria within paragraphs a and b of the policy.
- 2.3 The Policy has been modified in the 1st modifications of the Deposit Local Plan with altered wording, to draw in the use of comparable replacement or commensurate sites and the direct, indirect and cumulative impacts of development proposals more fully. The policy has been further altered within the 2nd modifications, with the phrase 'or likelihood to suggest' replaced with the wording 'to indicate' recognising the need for greater clarity and certainty.

3.0 Summary of objection(s)

- 3.1 Three objections have been lodged to the policy, covering the following:
- This policy makes no reference to allocated development sites, appearing to seek the justification of the principle of development where this must surely already be clear for allocated sites. It is difficult to see, having allocated these sites in the first instance, how

there can be any kind of balance in seeking to restrict their development in the event that the CNPA is not satisfied that new features and/or habitats of commensurate or greater importance can be provided. **038e**

- This policy is a hostage to the imperative for developers to make profit. In a National Park, where there is any threat it should be incumbent on the planning authority to ensure that there is, first of all, no risk to specific habitats and species through the development allocations, and secondly, that should such risk be identified, the Park Authority undertakes the survey and monitoring with charges being recouped from the developers. **434d**
- Consider such a development-orientated approach as inappropriate; we would substitute “will only be permitted” with “may” to retain open consideration of proposals. The wording is too open-ended and non-specific. **400f(f)**

4.0 Summary of Cairngorms National Park Authority Response

- 4.1 This policy is intended to ensure that development does not weaken the natural habitat and biodiversity of the Park, development should conserve and where possible enhance areas of value for biodiversity by requiring avoidance, suitable mitigation and management, or replacement. The policy reflects the 1st aim of the Park, to conserve and enhance the natural and cultural heritage of the area, accounts for the duty placed on the CNPA in regard to Biodiversity by the Nature Conservation (Scotland) Act 2004 (CD1.12) and has been worded to reflect national guidance such as NPPG14: Natural Heritage (CD3.2).
- 4.2 The objections have been reported to the Board of the CNPA when it considered the need for further modifications (CD7.3, 4 and 5) this resolved that several alterations be made to the wording of the policy; the structure and content remain largely unchanged. However it was considered several changes were appropriate to ensure that the policy does deliver the aim as intended, whilst not being overly restrictive or onerous and provide an appropriate level of guidance for developers and the public. It is considered that the policy highlights the need for a balanced approach to development which respects the aims of the Park, reflecting the importance of promoting biodiversity.

5.0 CNPA Recommendation

- 5.1 It is recommended that these objections are rejected. The policy is intended to ensure that development preserves and protects the overall integrity and connectivity of the ecosystems of the Park, requiring developers to account for biodiversity in their proposals and incorporate suitable measures, including avoidance, minimisation and appropriate replacement or mitigation as required. Additional wording has been included for certainty and clarity and now better reflects the requirements placed on development proposals. The CNPA, along with partner organisations intend to produce specific supplementary planning guidance (SPG) on biodiversity. No further modifications are proposed.

6.0 Assessment / Scope of Evidence

- 6.1 **038e a)** This policy makes no reference to allocated development sites, appearing to seek the justification of the principle of development where this must surely already be clear for allocated sites. It is difficult to see, having allocated these sites in the first instance, how there can be any kind of balance in seeking to restrict their development in the event that the Cairngorm National Park Authority is not satisfied that new features and/or habitats of commensurate or greater importance can be provided.

- 6.2 **Response:** The local plan establishes a clear framework of policies against which applications for development will be assessed. The policies are intended to address the requirements of the CNPA, are not site-specific but broad-based and are applicable over the entirety of the Park area. In this instance, policy 6 Biodiversity provides a requirement upon developers to assess the value of habitats and biodiversity on all sites, including development allocations, and consider measures to conserve and enhance these, as appropriate. In allocating development sites within the local plan, survey information has, where available, been accounted for, to recognise and avoid areas of habitat and species, designations and networks, in drawing up proposals. However it is not possible to preclude all development allocations from the need for further evaluation. The key to success must be seen as the direction of development to sites where the policy can be complied with, together with the other relevant policies of the plan.
- 6.3 The policy has been reworded to provide greater clarity of developer requirements, recognise the effect of collective impacts and to ensure adequate provision of ecological surveys and replacement habitats, as required. The policy places a sequential prioritisation and views compensatory replacement habitat (of equal or greater capacity) only where no reasonable other action is available, this would require to be to the satisfaction of the CNPA and other relevant parties, ensuring satisfactory and appropriate compensation. The CNPA recognise that habitat creation is never a substitute for the original habitat and should be a last option as new habitat lacks naturalness, continuity and complexity. Other Local Plan policies also provide for protected sites and other conservation designations. The CNPA, along with partner organisations intend to produce specific supplementary planning guidance (SPG) on biodiversity.
- 6.4 The CNPA have reviewed the original wording of Policy 6 to ensure that it is in line with national guidance, particularly NPPG14; Natural Heritage, and provides clear, concise and reasoned requirements for development proposals. The wording is considered to be reflective of the underlying aim of the policy; the requirement to protect and promote biodiversity while affording opportunity for appropriate development, it aims to strike an appropriate balance.
- 6.5 The wording attempts to provide a coherent response, realising and reflecting the underlying aim of the policy; the requirement to protect and promote biodiversity while affording opportunity for appropriate development; it aims to strike an appropriate balance. This policy is intended to support the 1st aim of the Park and ensure that all new development does not have an adverse impact on the natural heritage and biodiversity of the area. It is therefore worded to allow for developments to proceed where the criteria established in paragraphs a and b are met. The policy is also intended to ensure that all development goes ahead in line with the requirements of the Nature Conservation (Scotland) Act 2004 which has a direct relevance to the work of planning authorities. The policy is not intended to hamper appropriate development, and sets out to establish an appropriate framework for the protection and enhancement of natural heritage within the context of an integrated strategy for social, economic and environmental development. Overall it seeks to conserve and enhance natural heritage, whilst equally accounting for possible benefits to local communities. Only proposals that meet the strict stipulations will be permitted. No further modifications or amendments are proposed.
- 6.6 **038e b)** The wording is inappropriately vague referring “to the satisfaction of the planning authority” which requires clarification.
- 6.7 **Response:** The term 'to the satisfaction of the planning authority' reflects the need for the planning authority to take advice from and consult with external specialists and other parties such as SNH to ensure that criteria are complied with. This term provides clear guidance that indicates that the ecological value of sites will be assessed on a case-by case basis and other

stakeholders may be involved in the planning process, a commonly-recognised procedure within planning authorities.

- 6.8 **038e c)** Development will clearly impact to some degree on the natural environment, it is suggested that the terms of part b) of the policy is flawed and the requirement to mitigate by the provision of new habitats of commensurate or greater importance to those that are lost has not been reasonably considered and should not apply.
- 6.9 **Response:** It is acknowledged that inevitably development will have some impact on the natural environment, however it is important that the value of habitats and species is considered from the onset of the development process and appropriate measures accounting for biodiversity are implemented, thereby minimising these inherent impacts. It is considered that the policy provides a reasonable requirement upon developers to assess the value of habitats and biodiversity on all sites, including development allocations, and consider measures to conserve and enhance these, as appropriate.
- 6.10 The policy is not intended to hamper appropriate development, and this is the reasoning for paragraphs a and b of the policy. The policy places a sequential prioritisation and views compensatory replacement habitat (of equal or greater capacity) where no reasonable other action is available. The term 'commensurate' is used to reflect the need for effective, viable and suitable replacement habitat to agreeable standards. The extent and composition of this replacement habitat would be assessed on an individual site-by-site basis so it is considered unreasonable for the CNPA to evaluate the individual developer requirements at this stage. It is not considered unreasonable or onerous for the CNPA to require alternative provision of habitats in lieu, in instances where no viable proposition for conserving or enhancing identified areas on site is available. It is recommended that no change is made.
- 6.11 **038e d)** CNPA Modifications should endeavour to ensure a more appropriate balance is struck between development opportunities and the protection of the special qualities of the area. There requires to be an acceptance that development will have related impacts (both beneficial and potentially negative to some extent) but that it is for the local plan to balance these considerations and not to put more unnecessary obstacles in the way of beneficial development and in doing so remove the certainty required to allow the required investment (or part of it) in the first instance.
- 6.12 **Response:** The wording is considered to be reflective of the underlying aim of the policy; the requirement to protect and promote biodiversity while affording opportunity for appropriate development, it aims to strike an appropriate balance. The policy is not intended to hamper appropriate development, and this is the reasoning for paragraphs a and b of the policy. It sets out to establish an appropriate framework for the protection and enhancement of natural heritage within the context of an integrated strategy for social, economic and environmental development. Overall it seeks to conserve and enhance natural heritage, whilst equally accounting for possible benefits to local communities.
- 6.13 This policy is intended to support the 1st aim of the Park and ensure that all new development does not have an adverse impact on the natural heritage and biodiversity of the area and that all development goes ahead in line with the requirements of the Nature Conservation (Scotland) Act 2004 which has a direct relevance to the work of planning authorities.
- 6.14 **038e e)** The original wording of Policy 6 as contained within the Cairngorm National Park Deposit Local Plan should be retained in preference to the modified Policy 6. This provided for a better balance between conservation and appropriate development within the Park area.

- 6.15 **Response:** This policy is intended to ensure that development does not weaken the natural habitat and biodiversity of the Park, development should conserve and where possible enhance areas of value for biodiversity by requiring avoidance, suitable mitigation and management, or replacement. The CNPA board considered the need for modifications to the policy following receipt of objections (give date of meeting) this resolved that several alterations be made to the wording of the policy; the structure and content remain largely unchanged. However it was considered several changes were appropriate to ensure that the policy does deliver the aim as intended, whilst not being overly restrictive or onerous and provide an appropriate level of guidance for developers and the public. It is considered these proposed modifications provide clarity, sufficient scope and reflect the requirements of the CNPA when considering the policy in related planning applications. The changes made do not place a greater burden or weaken the balanced approach as intended. No further changes are proposed.
- 6.16 **038e f)** Paragraph 4.33 states that “Developments should therefore conserve and enhance natural and semi-natural habitats for the ecological, recreational, landscape and natural heritage values, including water bodies, watercourses, wetlands, peat and river corridor habitats”. This paragraph should either be deleted or clarified.
- 6.17 **Response:** The supporting text in paragraph 4.33 provides an indication of natural and semi-natural habitats which may be considered to be conserved and enhanced and for which purposes, it is not intended to be exhaustive, but is included to provide assistance and clarity of what may be expected by the Park Authority. It states in brief terms the habitat values that may typically be conserved by the policy. No alterations or rewording is proposed.
- 6.18 **434d** This policy is a hostage to the imperative for developers to make profit. In a National Park, where there is any threat, it should be incumbent on the planning authority to ensure that there is, first of all, no risk to specific habitats and species through the development allocations, and secondly, that should such risk be identified, the Park Authority undertakes the survey and monitoring with charges being recouped from the developers.
- 6.19 **Response:** It is considered that the policy provides a requirement upon developers to assess the value of habitats and biodiversity on all sites, including development allocations, and consider measures to conserve and enhance these, as appropriate. In general terms the Local Plan would not allocate areas for development that are particularly sensitive, designated or have a recognised biodiversity value.
- 6.20 The policy places emphasis on the consideration of biodiversity for developers from the onset, this requires them to undertake a comprehensive survey to assess the likely impacts of their development and account for these impacts. It is not considered reasonable or viable that the CNPA be expected to survey and monitor all such sites; however it has made a commitment to continue to support improvements to the evidence base and data collection as carried out by the CNPA itself and other partners. 6.1
- 6.21 **400f (f)** Considers such a development-orientated approach as inappropriate, would substitute “will only be permitted” with “may” to retain open consideration of proposals. The wording is too open-ended and non-specific. The policy should include examples of the kinds of “need and justification” that the CNPA has in mind that the developer could demonstrate. To suggest that new habitats of equal value as established ones can be created instantly and effectively is simply misleading. The plan undermines the status of protected sites and should set higher standards of protection.

6.22 **Response:** The CNPA have reviewed the original wording of Policy 6 to ensure that it is in line with national guidance, particularly NPPG14; Natural Heritage, and provides clear, concise and reasoned requirements for development proposals. The wording is considered to be reflective of the underlying aim of the policy; the requirement to protect and promote biodiversity while affording opportunity for appropriate development, it aims to strike an appropriate balance.

6.23 The policy has been reworded to provide greater clarity of developer requirements, recognise the effect of collective impacts and to ensure adequate provision of ecological surveys and replacement habitats, as required. The policy places a sequential prioritisation and views compensatory replacement habitat (of equal or greater capacity) only where no reasonable other action is available, this would require to be to the satisfaction of the CNPA and other relevant parties, ensuring satisfactory and appropriate compensation. The CNPA recognise that habitat creation is never a substitute for the original habitat and should be a last option as new habitat lacks naturalness, continuity and complexity. Other Local Plan policies also provide for protected sites and other conservation designations. The CNPA, along with partner organisations intend to produce specific supplementary planning guidance (SPG) on biodiversity.

7.0 Strategic issues

7.1 The National Parks (Scotland) Act 2000 (CD1.3) sets out four aims for National Parks, the first of which relates to the conservation and enhancement of natural and cultural heritage. To achieve these aims the Cairngorms National Park Plan (CD7.1) sets out a number of strategic objectives including a number related to biodiversity, acknowledging that the area of the Park contains nature conservation designations of national and international importance - some 39% of the area is designated for a particular conservation interest. These objectives include; conserving and enhancing the condition of habitats and species, targeted policy and funding mechanisms to support nature conservation and a research programme to provide information and monitoring on habitats, species and ecosystems. The Park Plan provides a framework for managing the National Park and working towards the 25 year vision. Policy 6 supports the strategic objectives for Conserving and Enhancing the Park.

8.0 Other material considerations

8.1 None

9.0 List of documents (in addition to Core Documents)

- CD1.3 The National Parks (Scotland) Act 2000
- CD7.1 Cairngorms National Park Plan 2007
- CD1.12 Nature Conservation (Scotland) Act 2004
- CD3.2 NPPG14: Natural Heritage
- CD7.3 CNPA Committee Report Deposit Local Plan May 2007
- CD7.4 CNPA Committee Report 1st Modifications October 2008
- CD7.5 CNPA Committee Report 2nd Modifications February 2009

10.0 Cairngorms National Park Authority Witnesses for Formal Hearing

- Robert Grant – Planning Officer
- Justin Prigmore – Local Biodiversity Action Plan Officer