



Planning Enforcement Charter for the Cairngorms National Park



December 2010

**Planning Enforcement Charter
for the Cairngorms National Park**

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I INTRODUCTION

- 1.1** Planning permission is required for most development that takes place in Scotland, with the exception of some minor works. Sometimes, however, developers or house-holders do carry out work without planning permission or fail to keep to the permission they have been given.
- 1.2** The Cairngorms National Park Authority (CNPA), in its role as the planning authority, has powers to enforce planning controls in such cases, and when it considers it is in the public interest to do so. The CNPA monitors developments to ensure planning controls are being followed and there is also an important role for the public in alerting the CNPA to any concerns they may have about any development.
- 1.3** Enforcement is one of the more complex parts of the planning system. The aim of this Charter is to ensure that adopted procedures are fair and reasonable to all parties and that the outcome of any investigation is in line with the breach of control. It is imperative that all interested parties are kept informed and are made aware of what their rights are in terms of appeals; what they have to do and the outcomes within the process.
- 1.4** This Charter explains how the planning enforcement process works; the role of the CNPA and the service standards¹ it has set. It also explains each stage of what can be a lengthy process, and outlines the role that can be played by members of the public in this process.
- 1.5** This Charter covers only the applications which have been 'called-in'² by the CNPA Planning Committee. A protocol will be agreed between the CNPA and the five councils currently in the Park for addressing issues of enforcement that may impact on the four statutory aims of the National Park.

Aims

- To conserve and enhance the natural and cultural heritage of the area;
 - To promote sustainable use of natural resources of the area;
 - To promote understanding and enjoyment (including enjoyment in the form of recreation) of the special qualities of the area by the public;
 - To promote sustainable economic and social development of the area's communities.
- 1.6** The issue of enforcement concerns many members of the public and a good monitoring and enforcement process can provide them with a high degree of confidence in the planning system. The CNPA hopes that you find this Charter useful and that you will let us know if you think we could improve the service further.
- 1.7** A full explanation of the different types of notices which can be enforced, and other powers which the CNPA has as the planning authority, is available in Section 8.5, p9.

This Charter sets out the current powers available to planning authorities. These powers are set out in the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006.

¹The Service Standards set out what the CNPA promises to do.

²'Call-in' is the process whereby the CNPA Planning Committee judge whether an application raises an issue of 'general significance to the aims of the Park' because of its scale; characteristics or because of its cumulative effect. Therefore, if it raises an issue, it will be 'called-in' to be dealt with and determined by the CNPA planning committee and not the local authority in whose area the application is located.

2 KEY POINTS ON PLANNING ENFORCEMENT

- 2.1** A breach of planning control is not a criminal offence except in the case of damage to listed buildings. The purpose of planning enforcement is to resolve the problem rather than to punish the mistake. In addition, any action taken has to be appropriate to the scale of the breach.
- 2.2** The CNPA has statutory powers to investigate breaches of planning control and the conditions attached to planning consents, and to take formal action where a satisfactory outcome cannot be achieved by negotiation. However, enforcement is a discretionary power. That means that, even where there is a breach of planning control, the CNPA has to consider if it is in the public interest to take enforcement action. The CNPA can decide that no action is necessary.
- 2.3** The CNPA is obliged to demonstrate that it is making an efficient use of its resources. The highest priority cases will be dealt with first so that time is spent effectively on cases that significantly affect the amenity and/or the public.
- 2.4** Planning enforcement also covers the physical display of advertisements such as billboards and advertisement hoardings, although different procedures apply. These are set out in Section 6 (see p7). The content of an advertisement is not covered by planning control. Any complaints about this should be made to the Advertising Standards Authority (www.asa.org.uk).
- 2.5** Information on the use of enforcement powers can be found in the Scottish Executive publication Planning Advice Note 54 (PAN54): Planning Enforcement which can be viewed at: www.scotland.gov.uk/Publications/2009/09/16092848/1.

Service Standard - 1

By publishing Service Standards (see 1.4, p2), the Cairngorms National Park Authority aims to improve its enforcement service and ensure it is responsive to the needs of the residents in the Cairngorms National Park. We will continually monitor the Charter to ensure that those standards are met.

Service Standard - 2

At least once a year, a written report will go to the Cairngorms National Park Authority Planning Committee outlining the nature and extent of enforcement activity and with recommendations to update and review this Charter.

Service Standard - 3

Further copies of the Charter are available at www.cairngorms.co.uk or at the CNPA offices at:

**Ground Floor,
Albert Memorial Hall,
Station Square, Ballater,
Aberdeenshire
AB35 5QB**

and

**14 The Square,
Grantown-on-Spey,
Moray
PH26 3HG**

and at **Service Points and libraries** throughout the Park.

3 IDENTIFYING POSSIBLE BREACHES OF PLANNING CONTROL

3.1 A breach of planning control can take several forms including:

- works being undertaken without planning consent;
- an unauthorised change of use of a building or land;
- failure to comply with conditions attached to a permission or consent;
- departing from the plans approved by the CNPA as the planning authority;
- unauthorised works to a listed building; and
- works to protected trees without first obtaining consent.

3.2 Members of the public have a vital role in reporting breaches of planning control. In the first instance, any concerns should be raised with the CNPA if the suspected breach is within the Park. You can make preliminary enquiries by telephone or in person at the CNPA offices, but these must be followed up in writing or by email.

3.3 The Cairngorms National Park covers parts of five local authorities – Aberdeenshire, Highland, Moray, Angus and Perth & Kinross. The issue of which planning authority will deal with the concern will be determined by the agreed protocols between the CNPA and the relevant local authority, and the member of the public will be kept informed.

3.4 Community councils have a special role to play in planning. They are in a position to be aware of possible breaches of development control and to make their concerns known to the CNPA in a more formal way. Community councils will be updated on planning enforcement issues through the Association of Cairngorms Community Councils.

3.5 It is essential to provide the following information when reporting a suspected breach:

- the address of the property concerned;
- details of the suspected breach of planning control, with times and dates if relevant;
- your name, telephone number and address;
- an email address if the complaint is submitted electronically; and
- whether or not the enquiry is to be treated confidentially.

It would also be helpful if corroborative evidence was available, for example photographs, times and dates of operations, etc.

Please note: anonymous complaints will not be investigated.

3.6 While the CNPA will do its best to honour requests for confidentiality, it may be subject to the requirements of the Freedom of Information (Scotland) Act 2002. Requests for total confidentiality may limit the ability of the Park Authority to take formal action and cannot be guaranteed if the case leads to court proceedings.

3.7 All enquiries should be addressed in the first instance to:

Bruce Luffman
Monitoring and Enforcement Officer
Albert Memorial Hall
Station Square
Ballater
Aberdeenshire
AB35 5QB
E-mail: bruceluffman@cairngorms.co.uk
Tel: 013397 53616
Fax: 013397 55334

3.8 A significant number of permissions are granted each year and enforcement cases will be prioritised to demonstrate efficient use of resources. Examples are given in Service Standard 5 (see Section 4, p5).

3.9 The public also have an important role to play in monitoring the conditions that are placed on planning consents. Details of the conditions are included within the Decision Notice attached to the planning permission.

3.10 Your involvement is therefore invaluable in providing information where it is believed that conditions have not been complied with or have not been discharged in a satisfactory way (see para 3.5, p4). Breaches of conditions are investigated in the same way as breaches of planning control.

3.11 The CNPA's monitoring and enforcement officer checks the information to determine if it involves a breach of control and includes all the detail required for a possible investigation. At this stage, if the information relates to a non 'called-in' application, it will be passed to the relevant local authority and will be dealt with according to their enforcement process and charter. The complainant will be notified of that action.

3.12 After preliminary checking and compliance with the requirements for investigation, the complaint will be registered. Once registered, an email or written acknowledgement will be sent to the complainant within five working days.

3.13 Complaints relating to matters not covered by the planning service, such as neighbour disputes over boundaries or perceived unfair commercial competition, cannot be investigated. However, in these types of matters, it is suggested that persons seek legal advice.

Service Standard - 4

If preliminary checking of a complaint suggests a breach of planning control, the complaint will be registered. Once registered, a written or email acknowledgement will be sent to the complainant within five working days. The acknowledgement will include a reference number and contact details for the investigating officer.

4 INVESTIGATING POSSIBLE BREACHES OF PLANNING CONTROL

4.1 A priority system is used for investigating complaints based on issues such as the effect of the breach and the significance of the site.

Service Standard - 5

All permissions and reports will be considered carefully. However, priority will be given to the highest category of breaches. These will include the following:

- works being undertaken in contravention of the requirements of an Enforcement Notice;
- unauthorised development that may lead to substantial and/or permanent damage to sites of international and national importance, for example Special Protection Areas; Special Areas of Conservation; Sites of Special Scientific Interest or Scheduled Ancient Monuments;
- unauthorised felling of trees and matters affecting trees protected by Tree Preservation Orders;
- the unauthorised demolition of, or major alteration to, a Listed Building, or the unauthorised demolition of a building within a Conservation Area;
- breaches of occupancy conditions; and
- any other breach of planning control, including breaches of conditions causing, or likely to cause, significant harm to the Park's natural or cultural heritage or to residential amenity.

- 4.2** An investigation begins with an enforcement officer visiting the site. Following which, the complainant will be informed of what action, if any, will be taken. In some cases, additional investigation may be needed.

Service Standard - 6

Anyone who provides information will receive a formal response within 20 working days of receipt of their email or letter. They will also be advised of any action to be taken, which may include the need for further investigation. They will be advised if the matter is not a breach of planning control.

- 4.3** The CNPA has powers to enter on to land, if there are reasonable grounds, to:
- establish if there has been a breach of planning control;
 - check if a breach has been satisfactorily resolved;
 - check if there has been compliance with a formal notice.

This power applies to any land and may involve officials entering land adjacent to the site of the breach. It is important to note that admission to any building used as a dwellinghouse shall not be enforced unless 24 hours notice of intended entry has been given to the occupier.

- 4.4** The length of time required to resolve a case or take action can be affected by a number of factors. Progress can be delayed whilst gathering further evidence. Similarly, an application to correct the breach of control or an appeal against a decision by the CNPA can also delay resolution. However, the CNPA will not let protracted negotiation prevent effective enforcement.

- 4.5** The CNPA recognises that delays can cause considerable frustration to those submitting information, particularly if they consider their amenity is affected. Consequently, the CNPA will make every effort to keep interested parties informed of significant stages as the case progresses.

5 ACTING ON BREACHES OF PLANNING CONTROL

- 5.1** In some cases action may not be appropriate, even though planning controls have been breached. As stated previously, the purpose of planning enforcement is to resolve problems, not punish mistakes. The CNPA, as the planning authority, has to consider each case on its merits and decide on the best solution. The CNPA is unlikely to take formal action, for example, over developments which in planning terms are seen as acceptable. It may be more appropriate, in such cases, to seek the submission of a retrospective planning application.

- 5.2** Only a relatively small number of cases require formal enforcement action. This often begins with a Planning Contravention Notice which seeks information, and then an Enforcement or a Breach of Condition Notice (see 8.5, p9) being served on those involved in the development, if a resolution is not reached. The Enforcement and Breach of Condition Notices include the following information:
- a description of the breach of control;
 - the steps to remedy the breach;
 - the timescale;
 - the consequences of failure to comply with the notice; and
 - where appropriate, any rights of appeal the recipient has and how to lodge an appeal.

- 5.3** Appeals against Enforcement Notices are considered by Scottish Ministers and dealt with, in most cases, by Reporters from the Scottish Government's Directorate for Planning and Environmental Appeals. Anyone who has submitted information on a breach of planning control is advised of the appeal.

Please note: there is no right of appeal against a Breach of Condition Notice.

Service Standard - 7

Where a planning breach cannot be resolved and action is justified, a formal notice will be served. This will be either an Enforcement Notice or a Breach of Condition Notice. The Cairngorms National Park Authority will also write to explain what is required, the timescales involved and the available options to resolve the issue.

- 5.4** Failure to comply with a notice may result in the CNPA taking further action. This can include a range of options including:
- referring the case to the Procurator Fiscal for possible prosecution;
 - carrying out work and charging the person for the costs;
 - seeking a Court interdict to stop or prevent a breach of planning controls.
- For more details, see Section 8, p9.

Service Standard - 8

Where the terms of any Enforcement Notice are not complied with, every effort will be made to resolve the case to the satisfaction of the Cairngorms National Park Authority.

Options include:

- direct action by the CNPA and/or
- the matter being referred to the Procurator Fiscal for possible prosecution.

- 5.5** Details of Enforcement Notices, Breach of Condition Notices and Stop Notices are entered into the CNPA's Enforcement Actions Register. You can inspect these documents at the CNPA planning office:

**Albert Memorial Hall
Station Square
Ballater
Aberdeenshire
AB35 5QB**

- 5.6** Enforcement action has to be taken within strict time limits:
- a four-year limit – this applies to 'unauthorised operational development' (the carrying out of building, engineering, mining or other operations in, on, over or under land) and change of use to a single dwellinghouse. No enforcement action may be taken after the end of the period of four years beginning with the date that operations were substantially complete.
 - a ten-year limit – this applies to all other development including change of use (other than to a single dwellinghouse) and breaches of condition. After ten years, the development becomes lawful if no enforcement action has begun.
 - there is no limit for breaches of Listed Building control.

6 ENFORCEMENT AND ADVERTISING

- 6.1** The display of advertisements is covered by the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984. Many advertisements are displayed with 'deemed consent' which means they do not require planning permission if they meet the criteria set out in the regulations. One of the most common of these permissive conditions is that the landowner has given permission for the advertisement to be displayed on their land.
- 6.2** Displaying an advertisement in contravention of the regulations is an offence and, if convicted in court, can lead to a fine. The court can impose further fines for each day the breach of the regulations continues.

6.3 The CNPA has the power to serve an Enforcement Notice. This specifies a time period (normally 28 days) for compliance with the notice. However, this period can be reduced to seven days if the CNPA believes there is an urgent need for the advertisement to be removed or altered in the interests of public safety, or if the advertisement can be removed without any other work being required.

6.4 An Enforcement Notice can also state that a particular piece of land should not be used to display advertisements. This remains in force even if the original advertisement is removed. Any subsequent advertising on this site would amount to a breach of the notice.

6.5 The CNPA also has powers to remove or destroy placards and posters that do not have planning permission or deemed consent. If the person who put up the poster can be identified, they have to be given at least two days notice that the CNPA intends to take the poster down. If they cannot be identified, then the advert can be removed immediately.

6.6 If necessary, the CNPA can enter unoccupied land to remove an advertisement but it has no powers to remove advertisements displayed within a building which has no public access.

7 MAKING A SUGGESTION OR COMPLAINT

7.1 The CNPA is committed to improving its service and dealing promptly with any failures and hopes that the public will be satisfied with the planning enforcement service. However, if you have any suggestions, concerns or difficulties, please contact the CNPA.

7.2 The CNPA will consider all complaints made about how an enforcement enquiry was dealt with. Disagreement with the outcome of an investigation, is not grounds for complaint. As noted above there is a separate appeals procedure for a recipient of an Enforcement Notice (see 5.3, p6).

7.3 In the first instance, complaints should be discussed with the Monitoring and Enforcement Officer. If you are still dissatisfied, please contact the CNPA's Head Planner at the Ballater Office (see 5.5, p7 for contact details).

7.4 Written complaints will be acknowledged within five working days and every effort will be made to fully investigate the complaint within 20 working days. The complainant will be given a written response explaining the outcome of the investigation and any action that the CNPA proposes to take. If no action is proposed, the reasons will be explained.

Service Standard - 9

Complaints or suggestions will be acknowledged within five working days. We will monitor all complaints and suggestions made and use them to review and improve the service we provide.

7.5 If are not happy with the initial response, you can take the complaint further under the CNPA's complaints procedure. You can complete a Complaints Form (available from the CNPA's Grantown-on-Spey and Ballater offices) and return it to the Corporate Services Director at the Grantown-on-Spey office. If that fails to resolve the problem, there is further advice and help from the CNPA's Chief Executive. Lastly, if you are not satisfied with the CNPA's complaints procedure, you have the right to take your complaint to the Scottish Public Services Ombudsman (SPSO), at:

Scottish Public Services Ombudsman (SPSO)

4 Melville Street

Edinburgh

EH3 7NS

Telephone: 0800 377 7330

Email: ask@spso.org.uk

You must contact the Ombudsman within 12 months of receiving the CNPA's initial response.

8 ENFORCEMENT POWERS

- 8.1** The enforcement powers available to a planning authority are set out in Part VI of the Town and Country Planning (Scotland) Act 1997 and in Chapter IV of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and Planning etc. (Scotland) Act 2006. The Planning Acts are available from:

HMSO

71 Lothian Road

Edinburgh

EH3 9AZ

or can be viewed at

www.scotlandlegislation.hmso.gov.uk

- 8.2** Government policy on enforcement is set out in Planning Circular 10/2009: Planning Enforcement. This document can be viewed at www.scotland.gov.uk/planning

- 8.3** Whilst the Planning Acts provide a range of planning control enforcement powers, the powers of the CNPA lie within the National Parks (Scotland) Act 2000 and the Cairngorms National Park Designation Order 2003.

- 8.4** Planning legislation is complex and therefore if you are in receipt of any formal notice from the CNPA planning authority, you are advised to seek legal or independent professional planning advice.

8.5 Types of Notice

Breach of Condition Notice - this enforces the conditions applied to any planning permission. It is effective from the date it is served. It may be used as an alternative to an enforcement notice (see below), and is served on anyone carrying out development and/or any person having control of the land. Anyone contravening a Breach of Condition can be fined up to £10,000 by the CNPA. There is no right of appeal to this notice.

Enforcement Notice - this generally deals with unauthorised development, but can also apply to breach of planning conditions. There are similar notices and powers to deal with listed buildings (see below), and advertisements. An Enforcement Notice

will specify a time period (a minimum of 28 days – see Section 6, p7); the steps that must be taken to remedy the breach and the time for this to be completed. There is a right of appeal and the notice is suspended until a decision is reached. Failure to comply with an Enforcement Notice within time is an offence, and may lead to a fine of up to £20,000 in the Sheriff Court. Failure to comply may also result in the CNPA taking Direct Action to correct the breach (see 8.6, p10).

Listed Building Enforcement Notice -

this must be served on the current owner, occupier and anyone else with an interest in the property. The procedures are similar to those outlined above. The notice must specify the steps to be taken to remedy the breach and a final date for compliance. Failure to meet the terms of the notice by the date specified is an offence. There is the right of appeal to Scottish Ministers against the notice. Breaches of listed building control are a serious matter. It is a criminal offence to undertake unauthorised works to demolish, significantly alter, or extend a listed building. In certain circumstances, this can lead either to an unlimited fine or imprisonment.

Stop Notice - this is used in urgent or serious cases where unauthorised activity must be stopped, usually on grounds of public safety. When a Stop Notice is served, the planning authority must also issue an Enforcement Notice. There is no right of appeal against a Stop Notice and failure to comply is an offence. An appeal can be made against the accompanying Enforcement Notice. If a Stop Notice is served without due cause, or an appeal against the Enforcement Notice is successful, the CNPA may face claims for compensation. Therefore, the use of Stop Notices needs to be carefully assessed by the CNPA.

Temporary Stop Notice (TSN) - this requires the immediate halt of an activity which breaches planning control. The provisions make an exception in that a TSN cannot prohibit the use of a building or caravan as a dwellinghouse. TSNs are

enforceable for 28 days, after which time, they expire. They may, however, be followed by further enforcement action such as an Enforcement Notice and Stop Notice. There is no provision to appeal against a TSN.

Fixed Penalty Notice (FPN) - this provides the CNPA with an alternative process, in addition to the option to seek prosecution, to address situations where a person has failed to comply with an Enforcement Notice (EN) or a Breach of Condition Notice (BCN). By paying the penalty imposed by the FPN, the person will discharge any liability for prosecution for the offence. They will not, however, discharge the obligation to comply with the terms of the EN or BCN, and the CNPA will retain the power to take direct action to remedy the breach and recover the costs of such from that person. The CNPA is not required to offer the option of a fixed penalty. Any decision to do so would be dependent on considerations such as the scale of the breach and its impact on local amenity.

Notice requiring application for planning permission for development already carried out (S33A) - where the CNPA considers that a development which does not have planning permission may be acceptable, ie the CNPA considers that it might be granted planning permission, the CNPA may issue a S33A requiring the landowner or developer to submit a retrospective planning application. This application will be considered on its planning merits and handled in the same way as any other planning application. Issuing a S33A does not guarantee that permission will be granted; the CNPA may, on consideration of the application, decide instead to refuse permission, or grant permission subject to conditions or alterations to make the development acceptable.

8.6 Other Powers

Planning Contravention Notice - this is used to obtain information about activities on land where a breach of planning control is suspected. It is served on the owner or occupier, on a person with any other interest in the land or who is carrying out operations on the land. They are required to provide information about operations being carried out on the land and any conditions or limitations applied to any planning permission already granted. Failure to comply with the notice within 21 days of it being served is an offence and can lead to a fine in the Courts.

Notice under Section 272 (of the Town and Country Planning (Scotland) Act 1997) – this provides limited powers for planning authorities to obtain information on interests in land and the use of land. Failure to provide the information required is an offence.

Notice under Section 179 (of the Town and Country Planning (Scotland) Act 1997) – this allows planning authorities to serve a notice on the owner, lessee or occupier of land which is adversely affecting the amenity of the area. This is also known as an Amenity Notice and sets out the action that needs to be taken to resolve the problem within a specified period.

Interdict and Interim Interdict - planning authorities can apply for the courts to impose an interdict to stop or prevent a breach of planning control. Court proceedings can be expensive and the CNPA would normally only seek interdicts in serious cases or where Enforcement Notices have previously been ignored. However, the CNPA can seek an interdict in relation to any breach without having to use other powers first. Breaching an interdict is treated as a contempt of court and carries heavy penalties.

Direct Action - failure to comply with the terms of an Enforcement Notice within the time specified can result in the CNPA carrying out the specified work. The CNPA can recover any costs it incurs from the landowner.

Notification of Initiation and Completion of Development (NID/NCD) and display of notices while development is carried out - are not enforcement powers.

They are intended to improve planning enforcement by requiring confirmation that development has started and been completed, and in the case of on site notices, to raise community awareness of developments in the local area. The CNPA and the local councils' planning authorities will be made aware of active development in their areas, enabling them to prioritise resources with a view to monitoring development.

An NID must be submitted to the CNPA for any development which has been granted permission and state when development will start. It must be submitted after planning permission has been granted and before development has commenced. Starting development without submitting an NID is a breach of planning control and the CNPA may consider enforcement action.

The NCD requires a developer to submit a further notice as soon as practicable after development had been completed.

Depending on the nature and scale of a development, the developer may also be required to display on-site notices while development is taking place. These notices contain basic information about the site and the development. They also provide contact details where members of the public may find out more information or report alleged breaches of planning control. It is a breach of planning control to fail to display such a notice when it is required to do so.

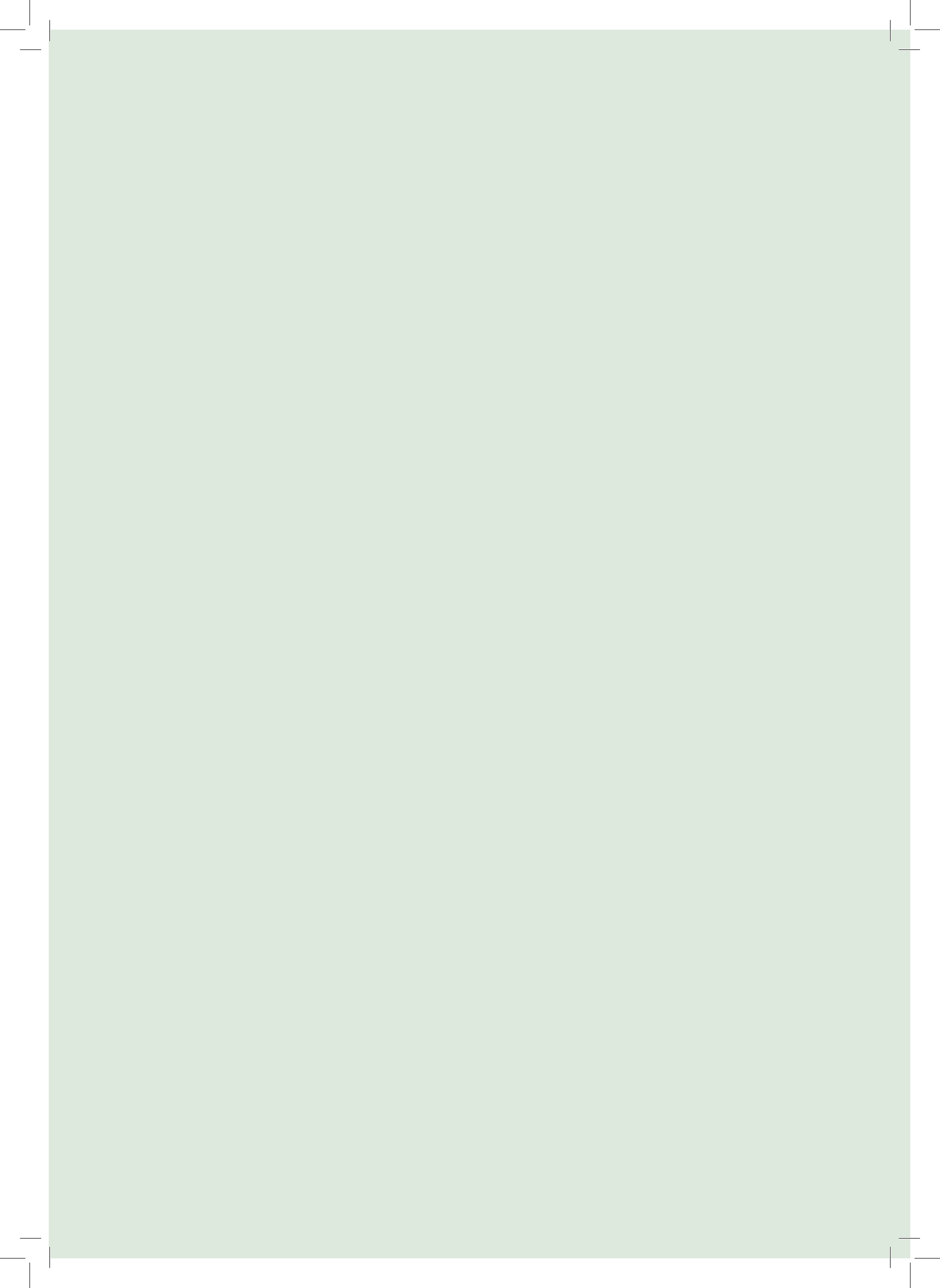
Please Note

This Charter does not comprise an authoritative interpretation of the Planning Acts.

Planning legislation is complex and if you are in receipt of any formal notice from the CNPA planning authority, you are advised to seek legal or independent professional planning advice.



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