

# AGENDA ITEM 7

## APPENDIX I

### DRAFT NATURAL HERITAGE NON-STATUTORY GUIDANCE

PLANNING

# **Cairngorms National Park**

## **Local Development Plan 2020**

### **Non-statutory guidance: Policy 4 – Natural Heritage**



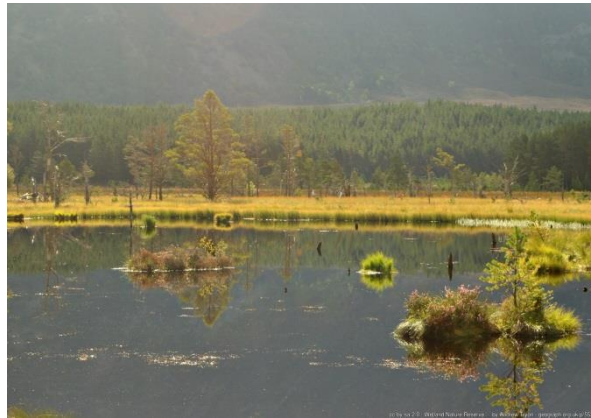


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Red squirrel in a Caledonian pine tree,  
Abernethy forest



Lochan, marsh and pine forest habitats,  
Invereshie



Dark green fritillary butterfly in grassland, near  
Boat of Garten

## How to use this guidance

This non-statutory guidance supports the Cairngorms National Park Local Development Plan 2020 and applies to all planning applications within the Cairngorms National Park. The Local Development Plan is available via <https://cairngorms.co.uk/planning-development/local-development-plan-2020/> and should be read alongside this guidance.

This guidance should be used during the preparation and assessment of planning applications, to identify measures to safeguard and /or enhance natural heritage interests.

## Introduction and context

Policy 4 of the Local Development Plan<sup>1</sup> provides the framework for how consideration and safeguarding of natural heritage interests should be incorporated into development proposals. A range of

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<sup>1</sup> Note, policy wording may change following the examination of the Proposed Plan.

natural heritage interests are identified, which includes habitats as well as wildlife.

The policy applies to all developments, not just those in ecologically sensitive locations. This is because the effects of development on natural heritage interests can extend outwith a development site (for example by increasing the number of people using a woodland for recreation, causing disturbance to ground nesting birds), and because many species are mobile and move through the landscape (for example some amphibians may hibernate in one location, but spend the rest of the year feeding and breeding in another, so a proposed development site could create a barrier between the two areas).

All planning applications should be prepared and assessed against the potential effects that the proposed development may have on the natural heritage interests of the Park as identified in Policy 4. The following sections of this guidance provide advice on what needs to be considered and provides links to other sources of relevant information.

## Policy 4 – Natural Heritage

### 4.1 International designations

Development likely to have a significant effect on a Natura 2000 or Ramsar site must demonstrate no adverse effect on the integrity of the site. Where this is not possible, development will be considered favourably only where:

- a) there are no alternative solutions; and
- b) there are imperative reasons of overriding public interest including those of a social or economic nature.

Where the site has been designated for a European priority habitat or species, development will only be permitted where the reasons for overriding public interest relate to human health, public safety, benefit consequences of primary importance for the environment or other reasons subject to the opinion of the European Commission (via Scottish Ministers).

## 4.2 National designations

Development that would adversely affect the Cairngorms National Park, a Site of Special Scientific Interest, National Nature Reserve or National Scenic Area will only be permitted where:

- a) it will not adversely affect the integrity of the area or the qualities for which it has been designated; or
- b) any such adverse effects are clearly outweighed by social, economic or environmental benefits of national importance, and compensated by the provision of features of equal or greater importance than those that are adversely affected.

## 4.3 Woodlands

Woodland removal for development will only be permitted where removal of the woodland would achieve clearly defined additional public benefits. Compensation will be expected which is at least equal to the quality and quantity of what is lost.

Only in exceptional circumstances will loss of compensation be acceptable.

There will be a strong presumption against removal of Ancient Woodland Inventory (AWI) sites, which are considered an irreplaceable resource. Only in exceptional circumstances will loss of AWI be permitted:

- a) where the developer can clearly demonstrate that the need and justification for the development outweighs the local, national, or international contribution of the woodland; or
- b) where it can be clearly demonstrated that the AWI site has low ecological value.

Where AWI removal is deemed acceptable, compensation for such loss will be mandatory.

## 4.4 Protected species

Development that would have a significant adverse effect on any European Protected Species will not be permitted unless:

- a) the developer can demonstrate that there are public health, public safety or other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment; and
- b) there is no satisfactory alternative solution; and
- c) the development will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.

Development that would have a significant adverse effect on species protected under Schedule 5 (animals) or 8 (plants) of the Wildlife & Countryside Act 1981, as amended, will not be permitted unless:

- a) undertaking the development will give rise to, or contribute towards the achievement of, a significant social, economic or environmental benefit; and
- b) there is no other satisfactory solution; and

c) the development will not be detrimental to the species concerned at a favourable conservation status in their natural range.

Development that would have a significant adverse effect on badgers or their setts will not be permitted unless the development fully complies with the requirements of the Protection of Badgers Act 1992 (as amended).

#### **4.5 Other biodiversity**

Development that would have a significant adverse effect on species listed in Annexes II or V of the EC Habitats Directive or Annex I of the EC Birds Directive will not be permitted unless:

a) there is no other satisfactory solution; and

b) the development will not be detrimental to the maintenance of the species concerned at a favourable conservation status in the natural range.

Development that would have a significant adverse effect on habitats or species

identified in the Cairngorms Nature Action Plan, UK Biodiversity Action Plan, Birds of Conservation Concerns (red and amber) or by Scottish Ministers through the Scottish Biodiversity List, including any cumulative impact will only be permitted where:

a) the developer can demonstrate that the need and justification for the development outweighs the local, national or international contribution of the area of habitat or populations of species; and

b) significant harm or disturbance to the ecological functions, continuity and integrity of the habitats or species populations is avoided, or minimized where harm is unavoidable; and appropriate compensatory and/or management measures are provided; and new habitats of equal nature conservation value are created as appropriate to the site.

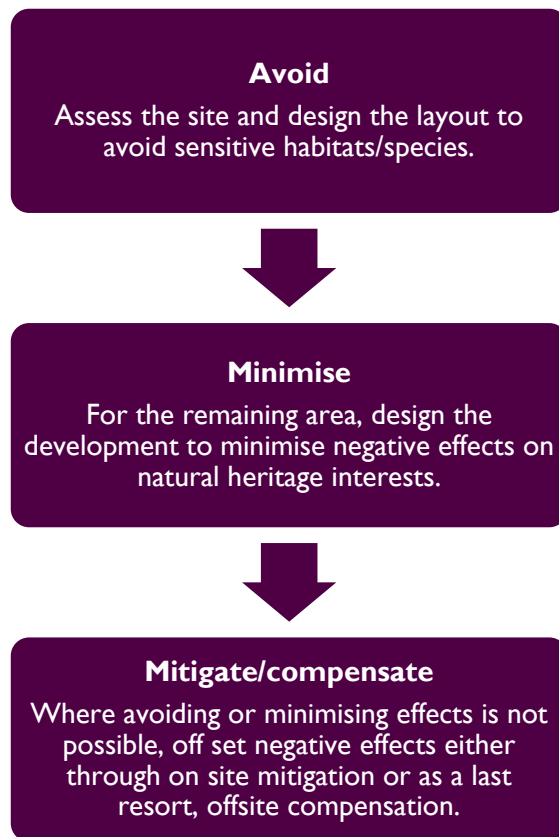
#### **4.6 All development**

Where there is evidence to indicate that a protected or priority habitat or species

may be present on, or adjacent to, a site, or could be adversely affected by the development, the developer will be required to undertake a focused survey of the area's natural environment to assess the effect of the development on it and to submit a species/habitat protection plan where necessary to set out measures to avoid, reduce or mitigate such effects.

## Mitigation hierarchy

The mitigation hierarchy (figure 1) should be used from the outset when considering the potential of a site for development.



**Figure 1** -mitigation hierarchy

Potential development sites should firstly be designed to avoid negative effects on natural heritage interests, and the services they provide (for example, figure 2, marsh habitats and floodplains that provide a home for wildlife as well as storing flood water, capture debris and slow flood water flow).



**Figure 2** – River Spey flood plain habitats

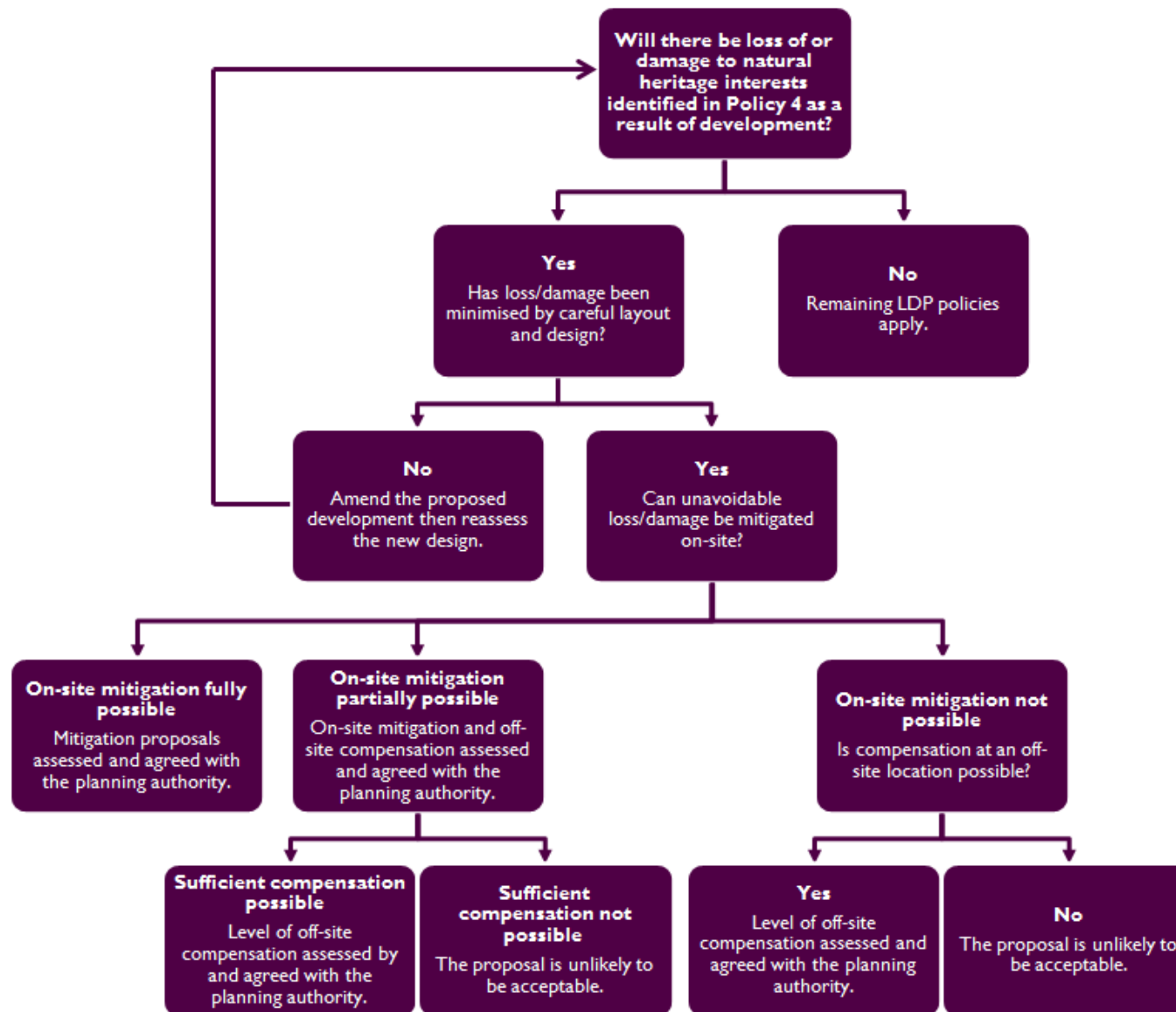
Avoiding the sensitive habitats and those used by protected or priority species should be the principal aim when identifying what proportion of a site is suitable for development.

After this has been done, the second aim should be to minimise remaining impacts. Where it is not possible to avoid impacts, measures to offset negative effects through mitigation (on site) or compensation (off site) should be identified.

## Process for considering natural heritage interests

The process shown in figure 3 (overleaf) should be used to inform site layout and design, as well as consideration of planning applications.

Considering natural heritage interests at the earliest stage should avoid planning applications being submitted that do not meet the requirements of Policy 4.



**Figure 3:** process to be applied when considering development proposals under Policy 4



## Providing sufficient information

Supporting information should be provided with planning applications to demonstrate how development proposals have been designed to minimise impacts on natural heritage interests. The information should be sufficient to enable the planning authority to assess applications against the requirements of Policy 4 (and, if necessary, carry out a Habitats Regulations Appraisal<sup>2</sup> (HRA)). The level of information required will depend on the significance of the potential effects of proposed development on the natural heritage interests identified in the policy.

A precautionary approach to the assessment of impacts will be applied. Where contemporary information is required but surveys have not been

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<sup>2</sup> For more information about Habitats Regulations Appraisal, see <https://www.nature.scot/professional-advice/planning-and-development/environmental-assessment/habitats-regulations-appraisal-hra>

carried out, there are gaps in knowledge or uncertainty about the effectiveness of mitigation or compensation proposed to address impacts on natural heritage interests, additional information may be requested. Where uncertainty remains, the precautionary principle will be applied and planning permission is unlikely to be granted.

## Need for ecological surveys

Because the Park is home to rare and/or sensitive species and habitats, surveys carried out by appropriately experienced (and licensed where required<sup>3</sup>) ecological surveyors may be required to inform development proposals. It is strongly recommended that developers discuss development proposals at the earliest stage with the relevant planning authority,

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<sup>3</sup> Details on which species are legally protected, actions that can be offenses and the species licensing process can be found on the Nature Scot (formerly Scottish Natural Heritage) website via <https://www.nature.scot/professional-advice/planning-and-development/advice-planners-and-developers/planning-and-development-protected-animals>

so that the need or otherwise for surveys can be established. Early discussion should help identify what surveys may be needed and their requirements (such as timing and duration), so that delays later in the planning process due to insufficient information can be avoided.

Depending on the natural heritage interest(s) affected, surveys may need to be carried out over a number of seasons due to mobile and/or migratory species (figure 4) and/or may need to be repeated over more than one year.



**Figure 4** – mute swans and a whooper swan

The type of survey work required will depend on:

- the sensitivity of the natural heritage interests present within the proposed development site and surrounding area; and
- the potential effects of proposed development on them.

It is the responsibility of the applicant to ensure that ecological interests are properly considered during the design stages, and that suitable surveys are carried out where necessary.

The purpose of surveys should be to find out what habitats and species are present within a proposed development site and surrounding area. Survey results should be used to inform site design and layout as well as mitigation measures (figure 5), so that impacts on natural heritage interests are avoided or minimised.

For example (but not limited to), by changing the layout to avoid sensitive habitats, reducing the number of units to reduce off site effects, or off setting unavoidable impacts by providing substitute new or improved habitat elsewhere on site.



**Figure 5** – mitigation measure to avoid adverse effects on bats, a legally protected species

## Useful sources of advice and information

- Table 4 in the Local Development Plan (pages 86 and 87 <https://cairngorms.co.uk/wp-content/uploads/2019/01/190117PLDP2020Web.pdf>) highlights some known sensitivities for some European sites protected for nature conservation. While the Table refers to specific European sites, the issues and mitigation measures identified in the Table are a useful guide for the same habitats/species outwith those sites.

- Scotland's Environment website (<https://www.environment.gov.scot/>) provides a compilation of habitats and species data from various sources.
- The National Biodiversity Network (NBN) Atlas Scotland provides species records compiled from public and biological recording centres, which can be accessed via <https://scotland.nbnatlas.org/>. They can be used for a desk study of the proposed development site and surrounding area that can be used to inform what ecological surveys may be required.

However, an absence of records in the Atlas does not necessarily mean that species are not present – it could just be that the species has not been surveyed for in a particular area. Advice from a suitably experienced ecologist should also be sought about what species might be present in the habitats on and surrounding the proposed development site.

- Applicants should refer to Nature Scot (formerly Scottish Natural Heritage) advice for developers on a range of natural heritage interests including protected areas, protected species and licensing requirements, which can be accessed via <https://www.nature.scot/professional-advice/planning-and-development/advice-planners-and-developers>.

For development sites with the potential to affect protected species including the habitats they rely on (for example, figure 6), surveys carried out by an appropriately experienced (and licensed if necessary) person will be required at the earliest stage to inform site layout and design.

Survey reports, and where necessary Species Protection Plans, should be submitted along with applications for planning permission in principle, as well as full planning permission. This will enable the Planning Authority, in consultation with Nature Scot, to

determine whether the legal requirements of protected species legislation can be met, and whether a species license is required to enable development to proceed.



**Figure 6** – water vole burrows

- For development sites with the potential to be connected to the habitats or species of European protected areas (i.e. Special Protection Areas and Special Areas of Conservation, previously known as Natura sites), sufficient information must be provided with the planning application to enable the Planning Authority to carry out a HRA. Development does not have to be

within or close a European site for there to be potential connectivity. For example there may be hydrological connections, mobile species that also use the wider area, or impacts caused by increased human activity in the wider area as a result of the development. More information on HRAs and European sites can be found on the Scottish Natural Heritage website via <https://www.nature.scot/professional-advice/planning-and-development/advice-planners-and-developers/planning-and-development-protected-areas>.

- Nature Scot provide advice and links to advice from other organisations on how to minimise the effects of construction on natural heritage interests for a range of different development types, available via <https://www.nature.scot/professional-advice/planning-and-development/advice-planners-and-developers/planning-and-development-good-practice-construction>.

- SEPA provide a range of information in relation to development and the water environment, including Sustainable Urban Drainage Systems (SuDS), which can address site drainage issues as well as providing an opportunity for biodiversity enhancement. This can be found via <https://www.sepa.org.uk/regulations/water/> and <https://www.sepa.org.uk/regulations/water/diffuse-pollution/diffuse-pollution-in-the-urban-environment/>.

Development proposals and decisions should be informed by the most up to date:

- Cairngorms Nature Action Plan (<https://cairngorms.co.uk/working-together/authority/national-park-strategies/cnap/>);
- Birds of Conservation Concern (<https://www.bto.org/our-science/projects/birdtrack/bird-recording/birds-conservation-concern>);

- UK Biodiversity Action Plan (<https://jncc.gov.uk/our-work/uk-bap/>); and
- Scottish Biodiversity List (<https://www.nature.scot/scotlands-biodiversity/scottish-biodiversity-strategy/scottish-biodiversity-list>).



**Figure 7** – curlew, a Cairngorms Nature Action Plan species red listed in the 2015 Birds of Conservation Concern <sup>4</sup>, a UK BAP and Scottish biodiversity list species

<sup>4</sup> Published in 2015, available via <https://www.bto.org/our-science/publications/psob>



**Cairngorms National Park Local Development Plan 2020**  
**Non-statutory guidance**  
**Policy 4 – Natural Heritage**

This document is available in large print on request. Please contact the Cairngorms National Park Authority on 01479 873535. It is also available to view at [www.cairngorms.co.uk](http://www.cairngorms.co.uk)

Published by  
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