

REPRESENTATION FORM

Introduction

The Proposed Local Development Plan (the Plan) sets out a strategy for future development in the Cairngorms National Park. It includes sites and proposals for development as well as the policies that will be used to make decisions on applications for planning permission. We aim to formally adopt the Plan in 2020 when the Local Development Plan 2015 comes to an end. The Plan focuses on the five year period until 2025. It also includes development proposals for the 10 year period until 2030, as well as providing a general indication of the likely scale and location of development as far as 20 years into the future.

How to comment

You can use this form to submit your comments on the Plan. Please complete a separate form for each part of the Plan you want to comment on.

All comments should be submitted no later than 5pm, Friday 5 April 2019.

Email: planning@cairngorms.co.uk

Post:

Cairngorms National Park Authority
FREEPOST NAT21454
Grantown-on-Spey PH26 3BR

You must submit your name and address to ensure your comments can be considered valid. This is because the Cairngorms National Park Authority (CNPA) is required by legislation to contact you in relation to your response.

Fair Collection Statement

As a registered Data Controller, the CNPA will collect, store and use your personal data for the purpose of informing the content of the Cairngorms National Park Local Development Plan 2020. You may request to see personal information held by the CNPA at any time. Information will be shared with the Scottish Government Department of Planning and Environment Appeals and may be published on our website. We will not publish address details but may publish the name of the person who has completed the form. By completing and submitting the form, you are consenting to the above.

Your details

Name Kenna Chisholm

Organisation RSPB Scotland

Address [REDACTED]

[REDACTED]

[REDACTED] Postcode [REDACTED]

Email [REDACTED]

If you are representing a third party, please give their details below.

Name

Organisation

Address

.....

..... Postcode

Email

REPRESENTATION FORM

1. Which section of the Plan would you like to comment on? (Please state clearly which policy, settlement, site reference number, paragraph number etc, your comment relates to)

Please see separate document: "RSPB Scotland Representations on Proposed Cairngorms Local Development Plan" and annexes.

2. What is your comment on this section of the Plan?

Please see separate document: "RSPB Scotland Representations on Proposed Cairngorms Local Development Plan" and annexes.

3. Please state clearly what change/s you wish to see made to the Plan to address your comment

Please see separate document: "RSPB Scotland Representations on Proposed Cairngorms Local Development Plan" and annexes.

What happens next?

Following the consultation period, all responses will be collated and assessed. The Proposed Local Development Plan and all consultation responses will then be submitted to Scottish Ministers and subject to an Examination by an independent Planning Reporter. You can keep up to date with progress on www.cairngorms.co.uk and Facebook and Twitter via [@cairngormsnews](https://twitter.com/cairngormsnews)

Queries

If you have any queries about the consultation process, please contact a member of the Planning Policy team.

Email: planning@cairngorms.co.uk

Telephone: **01479 873535**

Cairngorms National Park Authority
14 The Square, Grantown-on-Spey, PH26 3HG
www.cairngorms.co.uk

Clear

Submit

RSPB Scotland representations on Proposed Cairngorms Local Development Plan 2020

This document sets out the modifications to the Proposed LDP that RSPB Scotland seeks, and the reasons for them.

Modifications sought:

1. In paragraph 5.17 (on page 85, in Section 5 *Community Information*): delete the text “only those that are specified in the site allocation details will be required.”
2. Add as a further paragraph after paragraph 5.17 (on page 85, in Section 5 *Community Information*):
“5.18 It should be noted that other mitigation requirements in addition to those detailed in Table 4 may apply to a development in order to ensure compliance with Policy 4.1 and no adverse effect on the integrity of any Natura site.”

Reason: In our view it cannot be concluded beyond reasonable scientific doubt at this stage that development on all of the allocated sites (except at An Camas Mor and North Aviemore) would have no adverse effect on the integrity of any Natura site without any mitigation related to capercaillie. This view is explained and demonstrated in the attached Annex 1: *RSPB Scotland comments on HRA*. An appropriate assessment would be required at the planning application stage if a proposed development is likely to have a significant effect on a Natura site (as confirmed in Policy 4.1 and the supporting text). That appropriate assessment may result in the identification of further mitigation necessary to ensure that the development (alone or in combination) would not have an adverse effect on the integrity of the Natura site.

Modifications 1 and 2 above would make this clear, and modification 2 would also make it clear that further environmental mitigation may be required in order to satisfy other elements of Policy 4.1 (as Table 4 only refers to Natura site mitigation whereas paragraph 5.15 and the heading above it refers to environmental considerations more broadly).

Without these modifications, Section 5 of the LDP may give prospective applicants a false impression that the only environmental mitigation they will be required to undertake/contribute towards is the mitigation detailed in Table 4.

3. In Table 4 (on page 87, in Section 5 *Community Information*) add “We have identified in particular that” before “Sites in Aviemore may lead to a small increase in MTB use...”

Reason: In our view it cannot be concluded beyond reasonable doubt at this stage that development in North Aviemore and Granish would have no adverse effect on the integrity of any Natura site (in relation to the capercaillie qualifying interest) if only the mitigation set out in Table 4 is implemented. This view is explained and demonstrated in the attached Annex 1: *RSPB Scotland comments on HRA*. Table 4 may give prospective applicants a false impression of what will be required. We consider that

additional mitigation may be necessary, and modification 3 would keep open the possibility of requiring such additional mitigation.

4. In the An Camas Mor entry in Section 5 *Community Information* (page 102):

- a. **Replace the text ‘A Recreation Management Plan (RMP) will be required covering:’ with ‘A Recreation Management Plan (RMP) will be required. The RMP must detail sufficient and robust measures to ensure that the proposed development will not result in any adverse effect on the integrity of any Special Protection Area, including the following:’ and**
- b. **Add to the end of the following list: “11. Any other measures necessary to ensure that there is no adverse effect on the integrity of any Special Protection Area.”**

Reason: It cannot be concluded beyond reasonable doubt at this stage that development at An Camas Mor would have no adverse effect on the integrity of any Natura site (in relation to the capercaillie qualifying interest) if only the mitigation listed on page 102 is implemented. Please see attached Annex 1: *RSPB Scotland comments on HRA*. The HRA previously undertaken by CNPA for the recent Section 42 planning application ref 2017/0086/DET for An Camas Mor (CNPA, 2017¹ - see Section Four of that HRA report) identified as being necessary, various mitigation measures that are not covered by the list on page 102 of the PLDP. We also consider that mitigation over and above that identified in the Section 42 application HRA is likely to be necessary in order to avoid any adverse effects on SPA integrity, as explained in our letter (and annexes) of 26 July 2017 regarding the Section 42 application to CNPA (a copy of the letter itself is attached as Annex 2).

5. In Policy 11 ‘Developer Obligations’ (page 76), add “(e) mitigation of impacts on natural heritage” to the list of items to which contributions may be required.

Reason: Planning Circular 3/2012: *Planning Obligations and Good Neighbour Agreements* states that broad principles for planning obligations, including the items for which contributions will be sought and the occasions when they will be sought should be set out in the SDP or LDP. Whilst supplementary guidance should provide more detail on methodologies for the calculation of contributions, Planning Circular 6/2013: *Development Planning* confirms (in paragraph 139) that the identification of items for which contributions will be sought should not be included in Supplementary Guidance but instead should be within the plan itself.

The PLDP recognises that for some development sites in Aviemore (see Table 4 on pages 86 and 87), mitigation will be required in order to avoid adverse effects on Natura sites. The mitigation identified as being required includes enhanced ranger presence, management of mountain bike trails, and various other measures that would need to be implemented in the long term. It is unclear whether the developer would be required to, or indeed be able to, implement these measures in the long term, or whether the measures would be implemented by another party such as the National Park Authority. More widely, RSPB Scotland considers that additional recreation management and other mitigation measures may be necessary in order to ensure that the cumulative impacts of multiple developments do not result in adverse effects on the integrity of Natura sites. Planning Circular 3/2012 (Paragraph 14) confirms that planning obligations must relate to the proposed development either as a direct consequence of the development or *arising from the cumulative impact of development in the area*. In the case of some of the measures identified in Table 4, and the other

¹ CNPA (2017) Habitats Regulations Appraisal Report: An Camas Mòr, Planning Application No: 2017/0086/DET: Application under Section 42 to variation condition 1 of Planning Permission in Principle (CNPA Ref 09/155/CP) [Cairngorms National Park Authority Planning Committee Agenda Item 5 Appendix 4 18/08/2017]

measures that may be necessary as discussed above, it may be appropriate to require developers to financially contribute towards, rather than directly implement, those measures.

In addition, planning authorities have a duty under the Nature Conservation (Scotland) Act 2004 to further the conservation of biodiversity. Scottish Planning Policy states (at paragraph 194) that the planning system should seek benefits for biodiversity from new development where possible, including the restoration of degraded habitats and the avoidance of further fragmentation or isolation of habitats. Seeking financial or in-kind contributions from developers towards off-site habitat creation, enhancement or restoration could help to fulfil this biodiversity duty and policy obligation, and help to address the cumulative impacts of development on biodiversity. Examples of such practice elsewhere include the Scottish Borders Local Development Plan (2016) which states in its Policy IS2 that contributions may be required towards the protection, enhancement and promotion of environmental assets either on-site or off-site. Similarly, the Angus Local Development Plan (2016) Policy DS5 states that developer contributions may be sought for biodiversity enhancement (amongst other things).

Unless the plan is modified along the lines of modification 5 above, it would be impossible or difficult for CNPA to justify seeking financial contributions towards natural heritage mitigation measures (such as those mentioned above in relation to capercaillie and Natura sites) from applicants. The suggested modification will 'keep the door open' for such contributions to be sought. It is acknowledged that requirements for such contributions would need to satisfy the relevant legal and policy tests (as currently set out in Planning Circular 3/2012), but it should be noted that the Policy only says contributions towards certain matters *may* (rather than will) be required.

6. Add "currently" to paragraph 3.9 (page 16 in Section 3 *Spatial Strategy*) so that it states "The development strategy currently also includes the provision of a new settlement at An Camas Mor".

Reason: It is clear from Policy 1 and the supporting text (e.g. Paragraph 4.12) that if An Camas Mor (ACM) proves undeliverable during the Plan period, alternative sites (at North Aviemore) *may* be released for development as an alternative to An Camas Mor in order to maintain a 5-year effective land supply. In such an event, An Camas Mor would no longer form part of the development strategy, its role in the housing land supply having been replaced by the alternative sites.

7. After criterion b) of Sub-Policy 1.11 *Long term designations* (page 24), add the following text: "Development of housing on the long term housing designations cannot take place whilst there is an extant planning permission for development at An Camas Mor".

Reason: Sub-Policy 1.11 requires only 'strong evidence' (not conclusive evidence) that An Camas Mor will not be delivered in the plan period. CNPA may at some point in the future consider there is such evidence but may be mistaken, and ACM may subsequently be developed. Even if An Camas Mor is not delivered in the plan period (to 2025) it may still be developed after 2025 under the terms of the extant permission. If North Aviemore (with an indicative capacity of 400 units) was permitted, the addition of An Camas Mor to this could result in an oversupply of housing in the current (i.e. 2020-2025) or subsequent plan periods and increase the risk of adverse effects on the integrity of Natura sites. The Habitats Regulations Appraisal of the Proposed LDP has not considered the scenario of development occurring at both An Camas Mor and North Aviemore (whether or not they both happen in the same plan period). A subsequent LDP would not be able to prevent An Camas Mor if the permission for that development remained extant. Non-inclusion of An Camas Mor in a subsequent LDP would not affect the status of the planning permission. Modification 7 would address these concerns.

8. Add the word “and” between criteria (a) and (b) in sub-policy 1.11 Long term designations (page 24)

Reason: For the avoidance of doubt, to make clear that (a) and (b) would both need to be satisfied before early release of the long-term housing land would be considered.

9. Addition of a policy regarding the installation and operation of low and zero-carbon generating technologies

We seek the addition, as a policy, of one of the following:

“Proposals for all new buildings will be required to demonstrate that a proportion of the carbon emissions reduction standard set by Scottish Building Standards will be met through the installation and operation of low and zero carbon generating technologies. The relevant Building Standards and percentage contribution required is set out in supplementary guidance. The supplementary guidance will be kept under review to ensure the proportion of the carbon emissions reduction standard to be met by these technologies will increase over time.

This requirement applies to all new buildings with the following exceptions:

- 1) Alterations and extensions to buildings.**
- 2) Change of use or conversion of buildings.**
- 3) Ancillary buildings that stand alone and cover an area less than 50 square metres.**
- 4) Buildings which will not be heated or cooled, other than by heating provided solely for frost protection.**
- 5) Buildings which have an intended life of less than two years.**

A statement will be required to be submitted with an application for planning permission to demonstrate compliance with this requirement.”

(this is copied from Policy 48 of the Dundee Local Development Plan 2019)

Or

“Proposals for all new buildings will be required to demonstrate that at least 10% of the current carbon emission reduction set by Scottish Building Standards will be met through the installation and operation of low and zero-carbon generating technologies. A statement will be required to be submitted demonstrating compliance with this requirement. The percentage will increase at the next review of the Local Development Plan.

This requirement will not apply to:

- Alterations and extensions to buildings**
- Change of use or conservation of buildings**
- Ancillary buildings that stand alone and cover less than 50 square metres**
- Buildings which will not be heated or cooled, other than by heating provided solely for frost protection**
- Buildings which have an intended life of less than two years.”**

(this is copied from Policy NRG 1a of the West Lothian Local Development Plan 2018 - a policy that was added as a result of a Ministerial direction of June 2018 to West Lothian Council to consider adding this policy – a copy of which is attached as Annex 3)

Reason: The PLDP does not satisfy requirement of Section 3F of the Town and Country Planning (Scotland) Act 1997 which requires all planning authorities to include in their local development plans, policies requiring all developments to be designed to ensure that all new buildings avoid a specified

and rising proportion of the projected greenhouse gas emissions from their use, through the installation and operation of low and zero-carbon generating technologies (LZCGT).

10. Addition of the following text to begin Sub-policy 4.6 'All development' on page 45 (above the existing text of this sub-policy):

"All development proposals will be required to identify measures which will be taken to enhance biodiversity in proportion to the potential opportunities available and the scale of the development."

Reason: There does not seem to be a requirement in the PLDP for developers to seek to enhance/benefit biodiversity, despite the supporting text of Policy 4 stating (at paragraph 4.63, emphasis added) that the "policy will ensure that development conserves and enhances the outstanding natural heritage" of the National Park. The following sentence more accurately reflects the current wording of proposed Policy 4, when it states that the policy "enables enhancement" (emphasis added). Conserving and enhancing the natural (and cultural) heritage of the area is one of the aims of National Parks as set out in the National Parks (Scotland) Act 2000. In addition, planning authorities have a duty under the Nature Conservation (Scotland) Act 2004 to further the conservation of biodiversity. Scottish Planning Policy states (at paragraph 194) that the planning system should seek benefits for biodiversity from new development where possible, including the restoration of degraded habitats and the avoidance of further fragmentation or isolation of habitats.

Aberdeenshire Council has such a policy requirement: its LDP requires the identification of measures to enhance biodiversity (or geodiversity) in proportion to the opportunities available and the scale of the development.

It would be inappropriate for nature conservation-related planning policy inside the national park to be weaker than that outside – especially when in the same council area.

11. Addition of the following text at the end of sub-policy 4.6 (page 45): "Development proposals should follow the mitigation hierarchy."

Reason: The mitigation hierarchy is an approach that will help to achieve 'no net loss' (and if possible a 'net gain') in biodiversity, firstly through avoidance of impacts, then if impacts can exceptionally be justified, through mitigation or minimisation of impacts and finally, as a last resort only in very limited circumstances, through habitat restoration or compensation. The LDP should emphasise a requirement to robustly apply this mitigation hierarchy when planning for and considering proposals for all developments. In cases affecting Natura sites, a more strict legal framework is already in place. Application of the mitigation hierarchy will help to halt cumulative small-scale losses of biodiversity caused by development and help to achieve no net loss of biodiversity.



Annex 1: RSPB Scotland comments on Habitats Regulations Appraisal Report for Cairngorms National Park LDP 2020 - Proposed Plan

Introduction

We note that CNPA states in the Habitats Regulations Appraisal (HRA) Report that it has roughly followed the SNH guidance on Habitats Regulations Appraisal of Plans (SNH, 2015) apart from where this has been superseded by more recent case law. However, we consider that various important aspects of that guidance have not been followed.

Article 6(3) of the EC Habitats Directive requires that any plan, which is not directly connected with or necessary to the management of a European site, but would be likely to have a significant effect on such a site, either individually or in combination with other plans or projects, shall be subject to an 'appropriate assessment' of its implications for the European site in view of the site's conservation objectives. The plan-making body shall agree to the plan only after having ascertained that it will not adversely affect the integrity of the site concerned, unless in exceptional circumstances the provisions of Article 6(4) are met. This procedure is applied in Scotland through The Conservation (Natural Habitats, &c.) Regulations 1994 (as amended), and is known as the 'Habitats Regulations Appraisal' of plans.

Strathspey is the most important area in the UK for capercaillie (an iconic species which is highly sensitive to human disturbance) and contains a number of Special Protection Areas designated under European law and with specific legal protection for their capercaillie interest.

The latest national survey of capercaillie in Scotland estimated that there are only 1,114 individuals remaining.

There is growing evidence (including from studies in Strathspey) that human disturbance causes capercaillie to avoid using large areas of otherwise suitable woodland, putting pressure on existing populations and limiting the potential for population recovery.

Development in the Strathspey area of the National Park and elsewhere is likely to increase human recreational activity in the surrounding area. Increased recreation is likely to increase disturbance to capercaillie, and in turn is likely to have a significant effect on several nearby Special Protection Areas (SPAs): Abernethy Forest, Anagach Woods, Cairngorms, Craigmore Wood and Kinveachy Wood, all of which have capercaillie as a qualifying interest.

Unwise assumptions made by CNPA in the HRA

As detailed in Appendix 2 of the HRA report, CNPA assumes that development in a settlement would not cause significant disturbance to capercaillie if:

- (a) the population of the settlement is not predicted to increase over the plan period, and

Annex 1: RSPB Scotland comments on HRA

(b) non-housing development sites are not likely to change levels of human activity or patterns of recreation; and

(c) capercaillie woodlands are not significantly more accessible from any development site than from other parts of the settlement.

We consider that it is unwise to make assumptions on the basis of (a) and (c), for various reasons which we will now explain.

Unwise assumptions regarding effect of population size *per se* on recreation

In relation to point (a), the HRA is assuming that it is population increase *per se* (as opposed to, for example, an increase in the number of households or a change in the demographic make-up of the population) that would result in a change in levels of human activity or patterns of recreation. CNPA has provided no evidence to support that assumption.

RSPB Scotland considers that the *number of households is significantly more important than population size in determining recreation levels and patterns and associated risk of disturbance to capercaillie*. The reasons for this include:

- In 2013/14 the Scotland's People and Nature Survey (SPANS) estimated that only 48% of visits to the outdoors were taken alone (TNS, 2014), which means that approximately half of visits involved more than one person. 39% of visits were taken in the company of family members, and approximately a quarter included children in the party (TNS, 2014). This strongly suggests that the *number of households* is more important than population size in determining the number of visits. So, for example, it should be assumed that on average, 15 no. single-person households would generate more visits than 5 no. 3-person households, despite both scenarios involving a population size of 15.
- The CNPA Evidence Report on Conservation (CNPA, undated b) recognises the potential negative effect on capercaillie of recreation with dogs. Almost half of visits to the outdoors in 2012/13 were accompanied by a dog (SNH, 2014). CNPA (undated b) reports an average of about 0.8 dogs per household in the National Park. It is apparent that the number of households is more important than population size in determining the number of dogs; and thus in influencing the level of risk of disturbance to capercaillie.

The HRA report (Table 29) projects an increase in the number of occupied dwellings in the Highland area of the National Park of 883 dwellings (an increase of 14%) between 2020 and the end of 2029. This includes an increase of 527 dwellings in Aviemore, 53 in Grantown-on-Spey, 33 in Carrbridge and 20 in Nethy Bridge – all settlements particularly close to capercaillie woodlands. Ballater is also within 3km of several active capercaillie leks and within 5km of the Glen Tanar SPA (designated for capercaillie amongst other features), and the HRA report projects an increase in the number of occupied dwellings here of 43 over the same period. These projections are likely to be underestimates, particularly given the fact that they do not consider the contribution of windfall development.

The Scotland's People and Nature Survey (SPANS) 2013/14 (TNS, 2014) found that those aged 35-54 are more likely than average, and more likely than those aged 55+, to visit forests or woodland. An increase in the 35-54 year-old cohort as a proportion of the population is likely to result in an increase in woodland recreation, even if the population size remains stable.

Annex 1: RSPB Scotland comments on HRA

On the basis of the above, it is inappropriate for the HRA to assume that if the population of a settlement is not projected to increase over the plan period², the development of housing in that settlement will not lead to a change in levels or patterns of recreation in capercaillie woodlands. It should instead be assumed that the addition of housing (particularly in Grantown-on-Spey, Carrbridge, Nethy Bridge and Ballater as well as Aviemore) would result in an increase in recreational pressure (arising from walking, dog-walking, running and mountain biking) on capercaillie, potentially resulting in an adverse effect on the integrity of the capercaillie SPAs.

Uncertainties and limitations in use of population and household projections

The HRA makes use of long-term population and household projections for the National Park, produced by the National Records of Scotland (NRS, 2017)

NRS (2017) makes clear that these projections (including in relation to average household size) are subject to several limitations, including:

- *“(i) A projection is a calculation showing what happens if particular assumptions are made. The household projections are based on the population projections, which assume that past trends in migration, fertility and mortality will continue into the future. The household projections also assume that past trends in household formation from the 1991, 2001 and 2011 Censuses will continue. No forecast is made of possible future changes that may alter population growth or household formation. These might include economic and social change or imbalances in housing supply and demand, or local planning policies intended to modify past trends. Specifically, the assumptions do not take account of the recent referendum vote to leave the European Union. Therefore, these projections are not policy-based forecasts of what the Government expects to happen.”*
- *“(iii) There will be more uncertainty in the projections for smaller areas and smaller groups of people. The populations of the two National Parks in particular are quite small, and forward projections for such small populations are less reliable than for larger communities. These projections will also be less reliable for the distant future, therefore care must be taken in their interpretation. Since smaller areas tend to be affected more by migration, which is harder to predict, projections for these areas also tend to be less reliable than those for areas with larger populations.”*

The CNPA's Evidence Paper on housing (CNPA, undated a) confirms that the population of the National Park is generally ageing, with the working age (16-64) cohort having reduced in proportion between 2001 and 2017. NRS (2017) projections are that the number of households in the Cairngorms National Park would increase by 6% between 2014 and 2039 whilst the population would decrease by 4% over the same period. However, as noted above these projections are based on an assumption that past trends will continue, and take no account of local planning policies intended to modify these past trends.

Policy 3.1 of the Cairngorms National Park Partnership Plan 2017-22 ('the Partnership Plan') is to grow the economy of the Cairngorms National Park by strengthening existing business sectors, supporting business start-ups and diversification, and increasing the number of workers employed in the Park through (amongst other things) (a) *maintaining the population of the National Park and maintaining or growing the proportion of the working age population*, and (g) *provision of a housing land supply that supports*

² and provided that capercaillie woods are not significantly more accessible from the development than from other parts of the settlement, and that non-housing development sites are not likely to change levels of human activity or patterns of recreation.

Annex 1: RSPB Scotland comments on HRA

migration of young people and workers to the Park and maintains vibrant communities (Policy 3.1). The focus of that housing land supply is in the strategic settlements. The Proposed LDP confirms (in paragraph 4.1) that its housing policy intends to support this Partnership Plan Policy 3.1.

It is therefore clear that the Partnership Plan and the proposed LDP aim to modify past demographic trends in the National Park. The dualling of the A9 is likely to make Strathspey more suitable as a commuter base for people working in Inverness, Perth and elsewhere. This could in turn affect the demographic make-up, increasing the proportion of the working age cohort in the population and increasing the average household size in the area. Given this and the other limitations of the projections as identified by NRS (2017), the NRS projections of household sizes and population may be underestimates and should not be relied upon by the HRA.

Focus on woodlands close to settlements

The CNPA has attempted to identify “capercaillie woods [that] are likely to be used regularly for recreation by residents / users of the development site at detectable levels” - Q3 as detailed in Appendix 2 of the HRA Report. The subsequent questions require consideration only of those capercaillie woods identified in response to Q3.

The meaning of ‘detectable’ is not defined, but as discussed later in this note, the cumulative level and pattern of recreation in capercaillie woodlands (resulting from all of the development enabled by the LDP) is an important point that should not be ignored – whether or not a particular development alone causes a ‘detectable’ level.

The Scotland’s People and Nature Survey (SPANS) 2013/14 (TNS, 2014) found that whilst 40% of visits to the outdoors were closer than 2 miles from home, a greater proportion (43%) was between 2 and 10 miles from home. Overall, the average distance travelled to and from the destination on outdoor visits was 9.5 miles.

It is difficult to predict with confidence the destinations and routes that residents (and their dogs) would take and the frequency and timings of those trips, especially in the absence of robust baseline data on the destinations and routes taken by existing residents in the area. The CNPA has not presented any such data in support of the proposed LDP or the HRA Report. This difficulty exacerbates the scientific uncertainty associated with predicting the impacts of development, and resulting recreational activity, on capercaillie. It means that a precautionary approach should be taken, and it should be assumed that the residents of new dwellings would recreate in all of the capercaillie woodlands, and certainly within a 10 mile radius.

Lack of acknowledgement of minor residual effects and lack of in-combination assessment

We disagree with the conclusions throughout the HRA Report that there are no (minor) residual effects (MREs). The SNH (2015) guidance on HRA of plans explains that elements of a plan “which make provision for change but which could have no significant effect on a European site...because any potential effects would be insignificant, being so restricted or remote from the site that they would not undermine the conservation objectives for the site” are to be regarded as “minor residual effects” (page 21). Given the uncertainties and issues outlined above, it should not be assumed (as the HRA Report does) that no allocations will have minor residual effects in relation to capercaillie SPAs. Instead it should be assumed that most of the allocations (and certainly those in Strathspey) would have minor residual effects.

As SNH (2015, page 23) states

4.34 The requirement in the [Habitats] Directive is to undertake an appropriate assessment of a plan if it would be likely to have a significant effect on a European site “either individually or in

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combination with other plans or projects". The Directive recognises that in some cases the effects of a plan on its own would be either unlikely or insignificant. Nevertheless, the Directive also recognises that there may be a number of plans or projects, each of which would be unlikely to have a significant effect alone, but which, if their individual effects were to be added together, by them all coming forward over time, the effects in combination would be likely to be significant. It is clear that the protective measures of the Directive could be seriously undermined if these combinations of plans or projects escaped assessment; their combined effects could be at least as likely to be damaging to a site as the effects of one large plan or project alone.

4.35 The 'in-combination' test, therefore, is about addressing 'cumulative effects'. Elements of the plan that have individually been screened out because any effects of change are likely to be minor residual (see 4.18(d) above) should also be assessed in combination to consider any possible cumulative effect. These elements of the plan should be considered in combination with any other element of the plan screened out under 4.18(d). [...]

4.36 Cumulative effects should also be considered with other plans and projects. Only effects of other plans or projects which (like those of the plan under consideration) would not be likely to be significant alone, need to be added to this stage of the in-combination test. This in-combination test is for example relevant to plans which would have some potential effect on a site, but that effect alone would not be likely to be significant, and there are other plans or projects that would add to the plan's effects, either by making them more likely, or more significant, or both.

The HRA Report does not include details of any in-combination assessment. Such an assessment should include the effects of the A9 Dualling programme, as mentioned above.

Conclusion

Following a precautionary approach, it should be assumed that an increase in the number of households (and an increase in the working age cohort as a proportion of the population – an aim of the Proposed LDP and the Partnership Plan) will result in an increase in recreation in surrounding woodlands, and potentially a change in the patterns of such recreation, and in turn, potentially result in an adverse effect on the integrity of the SPAs for which capercaillie is a designated feature.

Particularly in the absence of an in-combination assessment and unless additional mitigation measures (e.g. policy caveats) are added to the LDP, it is not possible for CNPA to conclude beyond reasonable scientific doubt that the Proposed LDP would not adversely affect the integrity of any Special Protection Area.

References

Cairngorms National Park Authority (CNPA) (undated a) Cairngorms National Park Local Development Plan 2020 Proposed Plan – Evidence Paper: Rural Development – Part I Housing [online at <https://cairngorms.co.uk/wp-content/uploads/2019/01/Rural-Development-Evidence-Report-Part-1-Housing.pdf>]

Cairngorms National Park Authority (CNPA) (undated a) Cairngorms National Park Local Development Plan 2020 Main Issues Report – Evidence Paper: Conservation [online at <https://cairngorms.co.uk/wp-content/uploads/2019/01/Conservation-Evidence-Report.pdf>]

National Records of Scotland (NRS) (2017) Household Projections for Scotland's Strategic Development Plan Areas and National Parks: 2014-based [online at www.nrscotland.gov.uk/files//statistics/household-projections/sd-np-14/2014-based-house-proj-sdp-np.pdf]

Annex 1: RSPB Scotland comments on HRA

SNH (2014) *Scotland's People and Nature Survey 2013/14 Special Interest Report No. 7: Visits to the outdoors with dogs* [online at www.nature.scot/sites/default/files/2018-12/SPANS%20-%202013-14%20-%20special%20interest%20report%20series%20-%20Dogs.pdf]

SNH (2015) *Habitats Regulations Appraisal of Plans: Guidance for Plan-Making Bodies in Scotland* (Version 3.0, January 2015. Initially prepared by David Tyldesley and Associates) [online at <https://www.nature.scot/sites/default/files/2018-09/Habitats%20Regulations%20Appraisal%20of%20Plans%20-%20plan-making%20bodies%20in%20Scotland%20-%20Jan%202015.pdf>]

SNH (2018) *Scotland's People and Nature Survey: Participation in outdoor recreation* [online at www.nature.scot/sites/default/files/2018-12/SPANS%20-%202017-18%20Participation%20in%20outdoor%20recreation.pdf]

TNS (2014) *Scotland's People and Nature Survey 2013/14. Scottish Natural Heritage Commissioned Report No. 679.* [online at <https://www.nature.scot/sites/default/files/2017-07/Publication%202014%20-%20SNH%20Commissioned%20Report%20679%20-%20Scotland%27s%20People%20and%20Nature%20Survey%202013-14.pdf>]

Cairngorms National Park Authority
14 The Square
Grantown on Spey
Moray
PH25 3HG

By email only to planning@cairngorms.co.uk

26 July 2017

Dear Sir or Madam

2017/0086/DET: Application under Section 42 seeking planning permission for development at An Camas Mor, Inverdrue, Aviemore

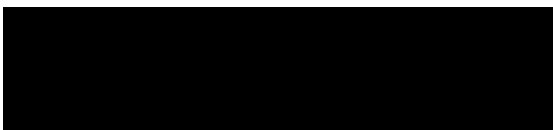
Thank you for inviting RSPB Scotland to provide comments on the draft Habitats Regulations Appraisal (HRA) report for the above planning application.

Our detailed comments on the draft HRA report are attached as Annex 1 to this letter. Our letters of 12 June and 13 April also remain relevant.

RSPB Scotland does not oppose new housing in Strathspey in principle. However, this is an extremely sensitive site, in a National Park, in the most important area in the UK for capercaillie (an iconic Scottish species which is highly sensitive to human disturbance) and in close proximity to a number of 'Natura' sites designated under European law and with specific legal protection for their capercaillie interest.

RSPB Scotland therefore objects to this proposal unless it can be clearly demonstrated that it will not adversely affect the integrity of nearby Natura sites or underlying SSSIs. We believe there are number of major outstanding issues which will need to be resolved before this can be achieved. We would be happy to revise our position should these matters be addressed. Our concerns and position are summarised as follows:

- The capercaillie is one of Scotland's most iconic but endangered birds, with the latest national survey estimating there to be only 1114 remaining individuals.
- Strathspey is the last remaining stronghold for capercaillie in the UK, holding 83% of the UK population. The fate of the entire UK population is therefore closely tied to the fate of the Strathspey population.
- There is growing evidence (including from studies in Strathspey) that human disturbance causes capercaillie to avoid using large areas of otherwise suitable woodland, putting pressure on existing populations and limiting the potential for population recovery.



The RSPB is part of BirdLife International,
a partnership of conservation organisations
working to give nature a home around the world.

- Development at An Camas Mor (ACM) would increase human recreational activity in the surrounding area.
- Increased disturbance is likely to have a significant effect on several nearby Special Protection Areas (SPAs): Abernethy Forest, Anagach Woods, Cairngorms, Craigmore Wood and Kinveachy Wood, all of which have capercaillie as a qualifying interest.
- There are several shortcomings with the draft HRA. These significantly reduce confidence in the HRA conclusions and include:
 - the use of national data to predict the population size of ACM and the number and distribution of recreational visits, potentially resulting in substantial underestimates; and the absence of baseline data on existing local patterns of recreation against which to compare those predictions;
 - the use of unwise assumptions in the recreational activity modelling (for example that recreational visits by ACM residents involving a round trip journey of more than 20 miles would not result in significant disturbance to capercaillie);
 - insufficient consideration of the impacts of recreational activities other than walking and mountain biking – such as horse riding; motorbiking and e-biking; and commercial dog walking;
 - incomplete consideration of potential setting-off points for recreational activity and the resultant lack of certainty that all potential disturbance impacts on capercaillie and all potentially affected areas have been identified;
 - lack of recognition that there would be minor residual effects;
 - lack of an in-combination assessment;
 - insufficient detail on mitigation measures to address the impacts identified, and on their likely effectiveness;
 - the potential ‘knock-on’ implications of the mitigation measures – including in terms of impacts on other species and habitats; and potential displacement effects on visitors, have not adequately been considered.
- Under the terms of the Habitats Regulations, the CNPA cannot approve the application unless convinced (after having carried out an appropriate assessment) that the development would not adversely affect the integrity of any European site (SPA or Special Area of Conservation), either alone or in combination with other plans or projects. If there remains any reasonable scientific doubt as to the absence of adverse effects, the application should not be approved. RSPB Scotland believes the above issues introduce substantial scientific doubt.
- The submitted environmental statement contains no information on recreational disturbance, so the public, other consultees and the Cairngorms National Park Authority cannot properly consider the likely significant effects of the proposed development on the environment, as required by the EIA Regulations.
- The Cairngorms National Park Local Development Plan states, in relation to ACM, that the applicant must supply all necessary information to allow the planning authority to carry out the appropriate assessment. Despite this requirement, the application does not include such information.
- The applicant has not submitted any information on proposed mitigation measures to address the impacts on capercaillie. Based on the information available to us, we consider that the mitigation outcomes and measures currently identified by CNPA/SNH as being necessary across all of the affected forests, would be insufficient; of uncertain effectiveness; and difficult or impossible to

fully enforce. In addition, it has not been established whether all the measures would have sufficient public support in order to be able to be implemented effectively.

In order to help illustrate the scale and nature of mitigation measures that may be required in order to reduce risks of disturbance to an acceptable level, we provide (as Annex 2) details of and explanations for mitigation measures on RSPB Scotland's Abernethy nature reserve and within Abernethy SPA that we believe could significantly reduce risk of disturbance to capercaillie at Abernethy. Please note that Annex 2 should not be published in the public domain, as it contains sensitive information on protected species.

We estimate that the capital costs of the mitigation already identified as being necessary (across all of the affected SPAs and supporting woodland, and including those we detail in Annex 2) would be in the region of £650,000 to £900,000 and the ongoing yearly costs of provision of a suitable ranger service (of around 5 to 6 FTE provision) could be in the region of £200,000 to £300,000.

Given the imperative need to avoid any further risk to the vulnerable capercaillie population and meet the legal requirements of the protected sites, it is crucial that if permission is granted, in addition to a recreational management plan agreed by all parties, a robust monitoring programme is implemented, which would incur costs additional to those mentioned above. This programme should include monitoring of the mitigation measures' implementation and efficacy; of the recreational patterns of ACM residents and visitors; and of the resultant effects on capercaillie. Careful consideration will be needed with regard to the measures used to assess whether mitigation outcomes are being met. We also recommend that CNPA consider granting a 'phased consent' whereby the developer is required to demonstrate that each phase of the development has not had an adverse effect on the integrity of the SPAs, before being able to proceed with the next phase, with further/alternative mitigation secured as necessary.

It would be crucial that sufficient funding is secured to guarantee the implementation in perpetuity (or for as long as is appropriate) of all of the necessary mitigation measures, including additional ones which may emerge at a later stage as being necessary, to avoid any future shortfall in funding having to be met by public bodies. Given the significant uncertainties and risks associated with the measures identified to date, it should be assumed that additional measures are likely to be necessary, potentially incurring further significant costs.

Given the major uncertainties associated with the predicted impacts of this proposed development, the uncertainties and likely inadequacy of currently proposed mitigation measures, and the resultant risks to vulnerable but legally protected capercaillie populations already under pressure, which we have highlighted here and in previous correspondence, we believe there are number of major outstanding issues which would need to be resolved before the CNPA could consider granting consent for this proposal. We would be happy to continue to provide advice on how to try to resolve these issues and would be happy to revise our position should these matters be able to be addressed.

Yours faithfully

[sent by email only]

Darrell Stevens
Conservation Officer – South Highland



[Redacted]

[Redacted]

[Redacted]

Our ref: A21429983

27 June 2018

Dear Mr McBratney,

**Town and Country Planning (Scotland) Act 1997
Notice of Intention to Adopt – West Lothian Local Development Plan (LDP)**

I refer to the correspondence dated 5 April 2018 certifying notice of West Lothian Council's intention to adopt the West Lothian Local Development Plan.

Scottish Ministers have decided that the proposed plan as notified is unsatisfactory and hereby direct under section 20(5) of the Town and Country Planning (Scotland) Act 1997, that West Lothian Council consider modifying the proposed West Lothian Local Development Plan as indicated in the Annex to this direction.

The modifications to the proposed Local Development Plan relate to the Scottish Ministers view that the plan, as notified, is not fully compliant with section 3F of the Town & Country Planning (Scotland) Act 1997. The Scottish Government made a representation on this issue during the Proposed Plan consultation period, however, a satisfactory outcome on this issue has not been achieved.

This direction is considered necessary because the plan does not set a proportion of emissions to be saved through the use of low and zero carbon generating technologies, nor is there any indication that the proportion of emissions to be saved will be increased in the future.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

Section 20(6) provides (subject to any further direction under section 20) that your authority may not adopt the West Lothian Local Development Plan unless you satisfy Scottish Ministers that you have made the modifications necessary to confirm with this direction, or the Scottish Ministers withdraw it.

In addition to the above, under section 21(9)(a) of the Town and Country Planning (Scotland) Act 1997, Scottish Ministers hereby require that the Action Programme, to be published by West Lothian Council under section 21(8), is subsequently to be updated and re-published on an annual basis until the end of the plan period.

Ministers expect the Action Programme to set out the following information, in line with Circular 6/2013:

- a list of actions required to deliver each of the plan's policies and proposals;
- the name of the person who is to carry out the action; and
- the timescale for carrying out each action.

My decision to require the Action Programme to be updated and re-published on an annual basis has been made in response to the significant housing land shortfall identified through the Examination process. This demonstrates to me that the plan is out of step with the ambition and policy of the Scottish Government to deliver the homes that people need now, and in the future, as a priority. It is my view that West Lothian Council must do more to address the delivery of housing in its area. My expectation is that by updating and re-publishing the Action Programme annually, a more regular and active process for monitoring the allocated land and progressing delivery will be achieved.

I would be grateful if you would therefore confirm that your authority will modify the plan, and take action to secure a stronger approach to delivering housing and infrastructure, as directed.

Yours sincerely,



KEVIN STEWART

Copied to:



Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

Annex

Modification - policy wording

After **POLICY NRG 1 - *Climate Change and Sustainability***, inset an additional policy with the following wording and make necessary requisite changes;

POLICY NRG 1a – *Low and Zero Carbon Generating Technology*

'Proposals for all new buildings will be required to demonstrate that at least 10% of the current carbon emissions reduction set by Scottish Building Standards will be met through the installation and operation of low and zero-carbon generating technologies. A statement will be required to be submitted demonstrating compliance with this requirement. The percentage will increase at the next review of the local development plan.'

This requirement will not apply to:

- 1 – Alterations and extensions to buildings*
- 2 – Change of use or conversion of buildings*
- 3 – Ancillary buildings that stand alone and cover an area less than 50 square metres*
- 4 – Buildings which will not be heated or cooled, other than by heating provided solely for front protection.*
- 5 – Buildings which have an intended life of less than two years.'*