

# **Review of SG Natural Environment 2: Protection of the Wider Biodiversity and Geodiversity**

## **1. Introduction**

1.1 This paper will review the Aberdeenshire Local Development Plan SG NE2: Protection of the wider biodiversity and geodiversity and assess whether any changes are required in light of amendments to national policy and changes in the local context. It will also assess whether the guidance provides a sound and robust basis for giving protection to habitats, species and geological features, which are not covered by a nature conservation designation.

1.2 NE2 gives strong protection to habitats, species and geological features which are not protected by nature conservation designation. NE2 fulfils the Council's biodiversity duty, as required under the Nature Conservation (Scotland) Act 2004.

## **2. Current Approach**

2.1 NE2 will only approve development, subject to other policies, if the applicant has also:

- identified measures that will be taken to enhance biodiversity and geodiversity, where possible, and in proportion to the scale of the development.
- demonstrated that due regard has been given to the extent of organic and organic-rich soils on sites.

NE2 will also not approve development that would be detrimental to a European Protected Species (EPS) unless it is demonstrated that:

- the development is required for preserving public health/safety or for reasons of overriding public interest
- there is no satisfactory alternative site/solution and any impact will be suitably mitigated

NE2 will not approve development that is likely to have an adverse effect on a species protected on the Wildlife and Countryside Act 1981 unless:

- it is required for preserving health and safety
- there is no other satisfactory solution (for birds only)

Where development is likely to have a significant adverse impact on habitats listed in Annex 1 of the Habitats Directive, on semi natural habitats or important species or areas of geodiversity, development will only be approved where it has been demonstrated that:

- public benefits at a local level clearly outweigh the ecological/geological value of the site
- the development will minimise any adverse impacts and implement suitable mitigation measures
- there will be no fragmentation of habitats as a result of the development

The policy applies the precautionary principle when the impacts of a development are uncertain.

2.2 NE2 is supported by a number of Planning Advice documents, including 1/2007 Biodiversity and Development, 1/2011 Protected Species Surveys, 1/2012 Opportunities for Biodiversity Enhancement in New Development.

### **3. Background**

#### National Context

- 3.1 The Convention on Biological Diversity defines biodiversity as "*The variability among living organisms from all sources including terrestrial, marine and other aquatic ecosystems, and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems*". Biodiversity therefore includes all living things and their environments. Scottish Natural Heritage point out that biodiversity is "*essential to sustaining the living networks and systems that provide us all with health, wealth, food, fuel and other vital services that we depend on*".
- 3.2 With regard to the protection of biodiversity, a number of valuable habitats/species, which are not covered by a Nature Conservation designation, are afforded statutory protection wherever they occur.
- 3.3 The Habitats Regulations 1994, specifically articles 12 to 15, provide protection to a wide range of animals and plants, i.e. bats and otters. The level of protection afforded is proportionate to their value and/or vulnerability, with European Protected Species (EPS), i.e. bats, afforded the highest level of protection.
- 3.4 The Wildlife and Countryside Act 1981 applies to the protection of wild birds, other animals and plants. The Act contains a number of schedules, which categorise the species and the levels of protection afforded to them. For example, it is an offence to disturb a red squirrel when it is occupying a structure or place for shelter/protection. While a number of actions can be carried out under license, this does not include any actions relating development.
- 3.5 The Protection of Badgers Act 1992, as amended by the Nature Conservation (Scotland) Act 2004, comprehensively protects badgers and their setts. Offences under the act include damaging, destroying or obstructing setts or disturbing badgers in a sett. Licences are available for specific purposes, including development, to allow some of these actions to be carried out legally.
- 3.6 Scottish Natural Heritage (SNH) state that "*the presence or potential presence of animals with special protection is a material consideration in determining planning applications*". SNH also note that EPS, species on Schedule 5 of the Wildlife and Countryside Act, and badgers require "*the most careful scrutiny*". While SNH point out that the suspected presence of protected species rarely means that development cannot take place, they highlight that "*early surveys and comprehensive mitigation plans are the key to progressing a development proposal that may affect a protected animal*".
- 3.7 SNH define geodiversity as "*the variety of rocks, minerals, fossils, landforms, sediments and soils, together with the natural processes which form and alter them*". Geodiversity delivers important economic, social and environmental benefits for the people of Scotland. For example, geological resources provide a source of materials for new building projects, healthy soils and clean water.
- 3.8 SNH point out that geodiversity and biodiversity are linked, stating that "*the rocks, sediments and soils form the land on which we live and on which the plants and animals of Scotland's ecosystems thrive*". SNH directly supports the general

approach of NE2 by stating that *“it is increasingly recognised that protecting geodiversity also helps conserve biodiversity”*.

- 3.9 While Sites of Special Scientific Interest (SSSI) are the primary statutory mechanism for protecting geodiversity in Scotland, geodiversity is also protected under a number of other designations, including National Parks, National Nature Reserves and Local Nature Conservation Sites. Further information on the protection of geodiversity within designated sites is provided in the policy review of NE1.
- 3.10 Protection of geodiversity outwith designated sites is achieved through Local Geodiversity Action Plans (LGAP's). LGAPs set clear aims and objectives, with measurable targets, for local geoconservation.
- 3.11 Soils are afforded specific protection under the Scottish Soil Framework (SFS). The SFS vision is for *“soil to be recognised as a vital part of our economy environment and heritage, to be safeguarded for existing and future generations.”* The SFS also describes key pressures on soils, particularly climate change, and identifies the actions needed to deliver key outcomes. One of the actions, which requires the protection of soil biodiversity, supports the approach of NE2.
- 3.12 SEPA promotes soil protection in a variety of ways, but directly supports NE2 by highlighting the need to avoid disturbance of high carbon soils such as peat.
- 3.13 The Nature Conservation (Scotland) Act 2004 directly supports NE2 by placing a statutory duty on all public bodies to further the conservation of biodiversity.
- 3.14 The Planning etc. (Scotland) Act 2006 requires development plans to contribute to sustainable development. The Act directly supports the need for NE2, as biodiversity and geodiversity provide the fundamental environmental services which underpin sustainable development.
- 3.15 Scottish Planning Policy 2010 (SPP) highlights the importance of biodiversity and reinforces the need for development plans to reflect the biodiversity duty set out in the Nature Conservation Act (2004). SPP directly supports the need for NE2 by stating *“decision making in the planning system should protect and enhance the natural environment, including biodiversity and the landscape...(and) take into account the implications of development for water, air and soil quality”*. In addition, SPP supports the wider approach of NE2, stating that *“planning authorities should take a broader approach to landscape and natural heritage than just conserving designated or protected sites and species, taking into account the ecosystems and natural processes in their area”*. SPP also supports the approach of NE2 by pointing out that planning authorities should, where possible, seek benefits for species and habitats in connection with new development, protect EPS and species listed under the Wildlife and Countryside Act 1981, prevent the fragmentation of habitats (when required), assess the likely impacts of development on carbon rich soils and apply the precautionary principle.
- 3.16 Planning Advice Note 60: Planning for Natural Heritage (2000) supports NE2 by pointing out that LBAP priority species and habitats can be reflected in development plan policies. PAN60 supports the protection of the wider geodiversity, stating that *“planning authorities can contribute to the conservation of (geodiversity) by considering the effects of development proposals on geomorphological processes, landforms and soils and actively seeking measures to avoid, reduce, mitigate or compensate for any adverse impacts, (while also) identifying opportunities to create or enhance earth heritage interests through development”*.

3.17 The National Planning Framework2 (NPF2) broadly supports the need for NE2, stating that “*Development plans should include policies designed to promote sustainable development*”. NPF2 directly supports NE2 by stating that the planning system has an important role to play in “*safeguarding and enhancing... rural biodiversity*”.

#### Strategic/Regional context

3.14 The proposed Strategic Development Plan (SDP) directly supports the need for NE2 by requiring the Council to “*take account of biodiversity, wildlife habitats, landscape, green networks and other sensitive areas in identifying land for development.. and assessing development proposals*”. The proposed SDP also includes a target “*to make sure that development improves and does not lead to the loss of, or damage to, built, natural or cultural heritage assets*”.

#### Local Context

3.15 The North East Biodiversity Action Plan (NE LBAP) aims to protect and enhance local and national priority habitats, species and areas. The NE LBAP Partnership has designated 195 local priority species, 80 of which are also UK priority Species. Action for most species is carried out through the relevant action plans.

3.16 NE2 aligns with the national/regional objectives and approach outlined above in the following ways. Criteria 1 & 2 and paragraph 6 of the justification text align with the SPP requirement for planning authorities to seek benefits for species and habitats, in connection with new development.

3.17 Criterion 3 accords with SPP, which requires applicants to consider the impacts of development on organic soils, particularly carbon rich soils.

3.18 Criterion B protects EPS, in line with the Habitats Directive and the approach set out in SPP.

3.19 Criterion C aligns with the Wildlife and Countryside Act 2011 and the approach outlined in SPP.

3.4 Criterion C and paragraph 2 of the justification text align with the Nature Conservation Act (2004), by contributing to the protection of species and habitats which are not under statutory protection, but are listed in the NE LBAP.

3.5 The last paragraph of the policy aligns with SPP’s requirement for the precautionary principle to be applied, where relevant.

3.6 Paragraph 1 of the justification text aligns with the Nature Conservation Act (2004).

3.8 Paragraph 9 of the justification text aligns with SPP’s requirement for supporting evidence to be provided when a development is likely to have an adverse effect on species protected under European or National legislation.

3.9 Paragraph 10 of the justification text aligns with SNH’s requirement for applicants to undertake an assessment/survey if there is evidence of an important habitat, species or geological feature on the site.

## **4. Drivers of Change**

4.1 National and regional policy/legislation on the protection of Nature Conservation Sites has not changed significantly since NE2 was written.

4.2 Including Protected Species within supplementary guidance on Wider Biodiversity and Geodiversity does not clearly identify the former as having a statutory

protection. In addition, the inclusion of the detailed criteria for protected species within NE1 creates a long and confusing policy, which is not easily understood and applied. In order to aid clarity, separate supplementary guidance should be developed for protected species.

- 4.3 In light of the above, NE2 should retain criterion A in its entirety, and criterion C from 'In the case of development that is likely to have a significant impact on....' Reference to 'habitats listed in Annex 1 of the Habitats Directive' within criterion C should be removed and included within the new SG on Protected Species.
- 4.4 It can be difficult to fully implement NE2 on sites with significant biodiversity and/or geodiversity value because the Environment Team are sometimes asked to consult on firm layout designs which do not take account of the sites ecological value. In light of this, it would be prudent to use the settlement statement maps to identify and protect any significant biodiversity/geodiversity areas within allocated sites.
- 4.6 While criterion A1 requires applicants to identify measures for biodiversity and geodiversity enhancement in all new developments, the Environment Team have advised that this requirement is not being applied to all developments. Given that this requirement relates to the layout and design of development, criterion A1 should be removed from NE2 and included within LSD2. This will increase awareness of the requirement and help ensure that it is applied more consistently. Paragraph 7 of the justification text in NE2 should be deleted and Planning Advice 6/2012 Implementation of Policy LSD2 amended to include an explanatory paragraph on the requirement for biodiversity/geodiversity enhancements. This paragraph should reference 1/2012 Opportunities for Biodiversity Enhancement in New Development.
- 4.7 The environment team have advised that an ecological baseline survey (or preliminary ecological survey?) is needed to inform an ecological management plan. In light of this, criterion A2 should require applicants to provide an ecological management plan.
- 4.5 There is a need to define what is meant by 'species of importance to biodiversity' in criterion C. Reference should be made to LBAP priority species and habitats.
- 4.11 Paragraph 2 of the justification text refers to Planning Advice on Natural Heritage, which is no longer available. This paragraph should provide a link to the NE LBAP website for more information on local priority habitats and species.
- 4.12 Paragraphs 3 and 4 of the justification text could be removed as they significantly lengthen the reasoned justification without, in practice, clarifying and/or justifying the policy. In addition, this information is readily available elsewhere.
- 4.13 British Standard (BS) 42020: Biodiversity – Code of Practice for Planning and Development was published in 2013. This provides guidance on what information should be included within an ecological management plan. In light of this, paragraph 8 of the justification text should be amended to make reference to this BS.
- 4.15 Paragraph 9 of the justification text should be removed from NE2 as it does not justify and/or clarify the policy position. In addition, this information is provided in Planning Advice which is signposted elsewhere in the justification text.
- 4.16 It was noted that in this SG reference to "water assets" could be revised to "water habitats and protected areas", in the interests of clarity, in order to avoid confusion with assets relating to public water infrastructure (e.g. Part IV assets).

## 5. Recommendations

- Separate supplementary guidance should be created for statutory protected species.
- NE2 should retain criterion A in its entirety, and criterion C from 'In the case of development that is likely to have a significant impact on....' Within criterion C reference to 'habitats listed in Annex 1 of the Habitats Directive' be removed and included within a new SG on protected species.
- Settlement statement maps should identify and protect any valuable biodiversity/geodiversity areas located within 'allocated sites'.
- Criterion A1 should be deleted and included within LSD2. Paragraph 7 of the justification text in NE2 should be deleted and Planning Advice 6/2012 Implementation of Policy LSD2 amended to include an explanatory paragraph on the requirement for biodiversity enhancements. This paragraph should reference 1/2012 Opportunities for Biodiversity Enhancement in New Development.
- Criterion A2 should be amended to read 'included an ecological baseline survey and management plan, where required'.
- Criterion C should be amended to make reference to 'LBAP priority habitats and species'.
- The last paragraph of the policy should be amended to read, 'Where the impacts of a development on national or local heritage resource are uncertain.... '
- The first paragraph of the justification text should be amended to read, 'This policy gives strong protection to habitats, species and geological features when they are...'
- Paragraph 2 of the justification text should be amended to read, 'Semi-natural habitats and species of importance to biodiversity are identified as priority habitats and species in the North East Local and UK Biodiversity Action Plans (NE LBAP and UKBAP). The list of NE LBAP priority habitats and species can be found at <http://www.nesbiodiversity.org.uk/>'
- Paragraph 8 of the justification text should be amended to read 'The fragmentation or isolation of habitats should be avoided. For all major developments a baseline ecological survey will be required, in line with Planning Advice 9/2012 Baseline Ecological Surveys. In addition, an Ecological Management Plan should be prepared; setting out how semi-natural habitats/networks will be maintained and enhanced. Further guidance on preparing Ecological Management Plans is provided in British Standard BS 42020: Biodiversity – Code of Practice for Planning and Development.
- Sentence 2 of paragraph 11 should be amended to read 'Where a development is likely to have a significant effect on the environment an Environmental Impact Assessment (EIA) may be required.
- Paragraph 12 should be amended to read 'All assessments and/or surveys should be undertaken by an independent and competent consultant and follow the guidelines set out in British Standard 42020 (2013).
- The last sentence of paragraph 13 should be deleted. This paragraph should be included as paragraph 2 of the justification text.
- Revised to "water habitats and protected areas", in the interests of clarity

## 6. Summary of main points

Current national legislation and planning policy/advice supports the need for NE2. While the legislative and policy context has not changed significantly since NE2 was written, this paper recommends that separate supplementary guidance should be created for statutory protected species, while settlement statement maps should identify and protect significant biodiversity/geodiversity areas within 'allocated sites'. In addition, the policy should require baseline ecological surveys (where needed), and refer to LBAP priority habitats and species. It is also recommended that all assessments, surveys and ecological plans should accord with relevant standards and planning advice, which should be signposted in the justification text. A number of other minor amendments are recommended in order to aid clarity.

## References

- Aberdeen City and Shire *Proposed Strategic Development Plan* (2013)
- Aberdeenshire Council (2012) *Aberdeenshire Local Development Plan*
- Aberdeenshire Council <http://www.aberdeenshire.gov.uk/natural/index.asp>
- North East Scotland Biodiversity (2011): *Local Biodiversity Action Plan*  
<http://www.nesbiodiversity.org.uk/>
- Scottish Government (2010) *Scottish Planning Policy*
- Scottish Government (2009) *National Planning Framework for Scotland 2*
- Scottish Government (2000) Planning Advice Note 60: *Planning for Natural Heritage*
- Scottish Government (2004) *Scotland's Biodiversity: It's in Your Hands*
- Scottish Natural Heritage <http://www.snh.gov.uk/protecting-scotlands-nature/protected-species/>