

Issue 17c		Lunan Valley and Loch Leven Catchment Areas	
Development plan reference:	6.1.14 – 6.1.15 – Highland Perthshire Area Lunan Valley Lochs, page 153 7.1.2 – Kinross-shire Area Loch Leven Catchment Area, page 197 9.1.12 – Strathmore and the Glens Area, Housing within the Lunan Valley Lochs Catchment, page 274 EP6 - Lunan Valley Catchment Area, page 55 EP7 - Drainage within the Loch Leven Catchment Area, page 56	Reporter: Timothy Brian	
	Body or person(s) submitting a representation raising the issue (including reference number):		
Portmoak Community Council (00638) E J Baxter (00729) Kinross Community Council (00841) Councillor Michael Barnacle (02633) SportScotland (03185) Scottish Environment Protection Agency (03194)		Scottish Natural Heritage (05211) The Linklater Family (09289/14) CKD Galbraith (09289/17) Snaigow Estates (09289/18) G S Brown Construction Ltd (09817) Homes for Scotland (10214)	
Provision of the development plan to which the issue relates:	The policies set the criteria against which development proposals in the Lunan Valley and Loch Leven Catchment areas will be assessed and the requirements on applicants in terms of drainage measures, to ensure that development does not result in an adverse impact on the qualifying interests of the Natura 2000 sites.		
Planning authority’s summary of the representation(s):			
<p><u>EP6 Lunan Valley Catchment Area – Changes to Policy Wording</u> Scottish Natural Heritage (05211/15/001): Replace Policy EP6 with recommended policy wording contained in Table 8.1 of the draft HRA record (pages 98-99) (S4_Doc_144).</p> <p>Scottish Environment Protection Agency (03194/8/001): The Lunan Valley Lochs Catchment has been downgraded by the addition of phosphorus through human activities. To protect the lochs there is a need to ensure that additional phosphorus pollution does not enter the catchment area.</p> <p>There are five lochs in the Lunan chain. The Loch of Drumellie, Loch of Lowes and Loch of Clunie are baseline waterbodies that are classified under the Water Framework Directive (WFD) (Core_Doc_163). The 2010 classification data shows the lochs downgraded to ecological status due to phosphorus loading, with pressure from sewage disposal and sewage tanks specifically mentioned. The environmental improvement objective is good status by 2021.</p> <p>The planning system has a key role in the protection and improvement of water environment (WFD and River Basin Management Plans).</p> <p>The inclusion of the suggested revised policy wording will protect the catchment from an increase of phosphorus levels in the catchment.</p> <p>Scottish Environment Protection Agency (03194/8/002): Recommend that reference is</p>			

made in the policy to developing a Code of Practice for Developers in the Lunan Lochs Catchment. Scottish Environment Protection Agency and Scottish Natural Heritage are available to work with Perth & Kinross Council to devise Supplementary Guidance in the form of a Code of Practice for developers, similar to work undertaken for Loch Leven.

CKD Galbraith (09289/17/001): Supports the Council's aim to protect sensitive environmental areas, particularly those which have suffered due to phosphate pollution, and would support the development of appropriate policies; however, any such policies should be positive and seek to ensure no environmental disbenefits, and preferably an improvement rather than being restrictive in terms of location and scale.

Advise that they are aware of a number of development propositions which have been progressed in recent years within the catchment area where there has been a net environmental benefit from careful consideration to the issues and technical advancement. As such they would resist specific limitation of development within this area and would promote support of development where it can be proven that there is no environmental disbenefit and hopefully an improvement.

Comments that Lunan Valley is an important link between Dunkeld and Blairgowrie and would urge the Council to develop a policy which allows for developments to be considered on their merits and the environmental implications thereof.

Snaigow Estates (09289/18/001): Policy EP6 should be amended to allow development where it is demonstrated that phosphorus mitigation will be implemented.

It has been proven that it is technologically possible to undertake limited development without increasing the phosphorus loading to the Lunan catchment, given suitable sewage plant and effluent treatment. With appropriate integration of existing substandard sewage systems and/or other phosphorus mitigation measures, existing phosphorus loadings can also be significantly reduced. It is therefore inappropriate to tightly draw the settlement boundary at Concraigie (S4_Doc_58) purely based on a presumption that development would increase phosphorus loading. This is reinforced by the recent granting of planning permission locally for developments including phosphorus mitigation measures, secured by Section 75 or appropriate planning conditions.

It does not seem logical that residential applications within the Lunan catchment justified by means of economic need, conversion or replacement buildings should be provided the scope to exacerbate the adverse phosphorus status of the water environment, whilst mainstream proposals are specifically precluded; this sets a distinct precedent for proportionate environmental harm, according to the perceived economic or social need of applications, rather than the reasonableness of the land use proposal.

The Linklater Family (09289/14/003): Policy EP7 covers drainage in the Loch Leven Catchment Area. It is not clear from Section 6.8 (Proposed Plan paragraph 6.8.2) (S4_Doc_425) whether the Plan implies the same policy considerations for the Lunan and Loch Leven areas.

It is technically possible to undertake limited development without increasing phosphorous loading and also existing phosphorus loading to the Lunan Catchment can be significantly reduced with the appropriate integration of existing substandard sewage systems and/or other mitigation measures.

Recent permission granted locally which included phosphorus mitigation secured through a Section 75 legal obligation.

SportScotland (03185/1/005): Reference should not be made to power boating/recreational pursuits unless related to development proposals under criterion (b) of Policy EP6. The development plan has no locus otherwise. Power boating and recreation should be allowed in the Lunan Valley except where it can be demonstrated, through evidence, that there will be a detrimental impact on nature conservation interests. Existing policies in the Plan should adequately safeguard against this.

EP6 - Lunan Valley General

Scottish Natural Heritage (05211/15/002): Amend wording of paragraphs 6.1.15 (Proposed Plan page 153) (S4_Doc_426) and 9.1.12 (Proposed Plan page 298) (S4_Doc_427) to clarify the settlements within the catchment area.

EP7: Drainage within the Loch Leven Catchment Area

Scottish Natural Heritage (05211/25/009): Amend the 'Note' section at the start of Policy EP7 on page 56 in line with the outcomes of the Habitats Regulations Appraisal (S4_Doc_143). (05211/16/002) Delete the first section of criterion (b) of Policy EP7 as the aim of the Catchment Management Plan (Core_Doc_052), with respect to development, was to ensure there was no net increase in phosphorus loading to the loch. In order to achieve this, and comply with the Conservation (Natural Habitats, &c.) Regulations 1994 (Core_Doc_164), this would apply to all development.

Scottish Environment Protection Agency (03194/9/001): The wording of the first section of criterion (b) of Policy EP7B is contrary to Policy EP3B (S4_Doc_428). The requirement in Policy EP3B for development to connect to the public system is in keeping with the duties that Perth & Kinross Council has as a responsible authority under the Water Environment and Water Services (Scotland) Act 2003 (WEWS) (Core_Doc_102) to exercise their designated functions so as to secure compliance with the requirements of the Water Framework Directive (WFD) (Core_Doc_163), and protect the water environment.

The principle of the Urban Waste Water Treatment Directive (UWWTD) (Core_Doc_165) is to provide collecting systems for all agglomerations greater than 2000 population equivalent unless this would produce no environmental benefit or would involve excessive cost.

We oppose development in or close to a settlement served by a public sewerage system which proposes individual/private waste water drainage arrangements as we consider that the fragmentation of the strategic public network of collecting systems is not compatible with the principles of the UWWTD nor does it provide a long term sustainable solution to waste water drainage provision.

Kinross Community Council (00841/1/001): Questions whether the Loch Leven Catchment area can cope with the extra waste and changes to water flows as a result of development. Understood that at peak flow untreated waste is discharged into the loch, and are concerned that extra housing will add to the problem and therefore exacerbate the recent upward trend of pollution in the loch. Development will change the flow rate into drains and may also increase the problem of peak flow. Whilst it is understood that this is in essence an issue for Scottish Water, and not a reason for not developing, it is argued that there must come a point when the loch ecosystem cannot cope. Urge the Council to *'move away from an arbitrary percentage reduction and seek a more*

scientifically based rationale for permitting development in this most protected water basin.'

Requests that an additional condition be added for all sites within the Loch Leven Catchment area that makes development *'contingent on wider assurance that Scottish Water can deliver a level of waste the Loch is able to cope with.'*

Continues that this is broader than the current condition included for some of the site specific proposals; believes that this wider impact must be taken into account.

G S Brown Construction Ltd (09817/3/005): A long term solution is required for the drainage issues in Loch Leven Catchment Area. 125% mitigation measures does not equate to removing the detriment created by development. 100% is acceptable. Circular 1/10 (S4_Doc_340) is clear that developers cannot be expected to resolve existing deficiencies in the system.

Homes for Scotland (10214/1/024): 100% mitigation measures should be required, not 125%. 125% mitigation measures does not equate to removing the detriment created by development. Circular 1/10 paragraph 19 (S4_Doc_340) states that *'Planning agreements should not be used to resolve existing deficiencies in infrastructure provision.'* It is clear that developers cannot be expected to resolve existing deficiencies in the system.

E J Baxter (00729/1/001): Loch Leven has been degraded over the last 150 years by the addition of phosphorus through human activities. *'I am pleased Perth & Kinross Council still deems the principal aim of the Catchment Management Plan 1999 (Core_Doc_052) to reduce the levels of phosphates entering Loch Leven - remains relevant today and have taken this into account throughout this proposal and consider the uppermost principal is to ensure that there is no increase of phosphorus in the Loch Leven Catchment arising from waste water associated with new developments.'*

Councillor Michael Barnacle (02633/1/020); Portmoak Community Council (00638/2/011): Support for the policy.

Modifications sought by those submitting representations:

EP6 Lunan Valley Catchment Area – Changes to Policy Wording

Scottish Natural Heritage (05211/15/001): Replace Policy EP6 with recommended policy wording contained in Table 8.1 of the draft HRA record (pages 98-99) (S4_Doc_144) as follows:

'Policy EP6: Lunan Valley Catchment Area

The Council will protect and seek to enhance the nature conservation and landscape interests of the Lunan Valley Catchment Area. Within the area:

- (a) there will be a presumption against built development except: within settlements; for renovations or alterations to existing buildings; and developments necessary for economic need which the developer can demonstrate will have no adverse impact on the environmental assets of the area nor are likely to result in an unacceptable increase in traffic volumes;*
- (b) recreational pursuits like power water sports, likely to cause disturbance in and around sites of nature conservation interest, will be discouraged;*
- (c) tree planting should be predominantly native species, including Scots Pine, except in cases where it can be proved that the landscape diversity will be improved by the use*

of a more varied range of species. All planting should be designed to complement the landscape.

Total phosphorus from built development must not exceed the current level permitted by the existing discharge consents and the current contribution from built development within the rural area of the catchment. Where improvements reduce the phosphorus total from the built development, there will be a presumption in favour of retaining such gains to the benefit of the ecological recovery of the Lunan Lochs.

All applicants will be required to submit details of the proposed method of drainage with their application for planning consent and adopt the principles of best available technology, not entailing excessive costs, to the satisfaction of the Planning Authority in conjunction with SEPA.

Note: Policy RD3: Housing in the Countryside is limited to economic need, conversions or replacement buildings within the Lunan Valley Catchment Area.

Note: Development within the catchment must comply with the general drainage policies as well as policies relating to the catchment area. Supplementary Guidance details the procedures to be adopted for drainage from development in the Lunan Valley area (produced by SEPA/SNH and the Council).'

If the 'Suggested Mitigation Measures' Option B is chosen under the 'Settlements' section (see Table 5.6 of the HRA) (S4_Doc_150) and (S4_Doc_151) for the settlements of Butterstone, Concraigie, Craigie and Kinloch, it will be necessary to add the following additional text and criteria to the end of Policy EP6 i.e. after '...Planning Authority in conjunction with SEPA.'

'The following criteria will also apply to development proposals at Butterstone, Concraigie, Craigie and Kinloch so as to ensure no adverse effects on the Dunkeld-Blairgowrie Lochs SAC:

- (d) Drainage from all development should ensure no reduction in water quality.*
- (e) Construction Method Statement to be provided where the development site will affect a watercourse. Methodology should provide measures to protect the watercourse from the impact of pollution and sediment.*
- (f) Where the development site is within 30m of a watercourse an otter survey should be undertaken and a species protection plan provided, if required.'*

Scottish Environment Protection Agency (03194/8/001): Recommend that the policy wording in part (a) is expanded to:

'...no adverse impact on the environmental assets of the area including, not increasing phosphorus discharged into the catchment, nor likely to result in...'

Scottish Environment Protection Agency (03194/8/002): Recommend that reference is made in the policy to developing a Code of Practice for Developers in the Lunan Lochs Catchment. Reference is made in the suggested revised Policy EP6 to 'developing a Code of Practice for Developers in the Lunan Lochs Catchment'.

CKD Galbraith (09289/17/001): EP6 should be amended to allow development where appropriate mitigation and hopefully an improvement can be achieved.

Snaigow Estates (09289/18/001); The Linklater Family (09289/14/003): Policy EP6 amended to allow development where it is demonstrated that Phosphorus mitigation will be implemented.

SportScotland (03185/1/005): Remove Policy EP6 (b) *'Recreational pursuits like power water sports, likely to cause disturbance in and around sites of nature conservation interest will be discouraged;'*

EP6 - Lunan Valley General

Scottish Natural Heritage (05211/15/002): Amend wording of paragraph 6.1.15 and 9.1.12 to include: *'The settlements that lie within the Lunan Lochs Catchment are Butterstone, Concraigie, Kinloch and west of Blairgowrie.'*

EP7 Drainage within the Loch Leven Catchment Area

Scottish Natural Heritage (05211/25/009): Amend the 'Note' at the start of Policy EP7 on page 56 to read:

'Note: Development within the catchment must comply with the general drainage policies as well as policies relating to the catchment area. To ensure there are no adverse impacts, either individually or in combination, on water quality in Loch Leven SPA.'

Scottish Natural Heritage (05211/16/002); Scottish Environment Protection Agency (03194/9/001): Delete first section of EP7B (b) *'where, for a non-residential development, it is not economic to connect to the public system and'*

Kinross Community Council (00841/1/001) Council should *'move away from an arbitrary percentage reduction and seek a more scientifically based rationale for permitting development in this protected water basin.'*

Sites within the catchment of the Loch should have a condition added that makes development *'contingent on wider assurance that Scottish Water can deliver a level of waste the Loch is able to cope with.'*

G S Brown Construction Ltd (09817/3/005); Homes for Scotland (10214/1/024): Replace '125%' with '100%' In Policy EP7C.

Summary of responses (including reasons) by planning authority:

EP6 Lunan Valley Catchment Area – Changes to Policy Wording

Scottish Natural Heritage (05211/15/001); Scottish Environment Protection Agency (03194/8/001 & 03194/8/002); CKD Galbraith (09289/17/001); Snaigow Estates (09289/18/001); The Linklater Family (09289/14/003): Since the publication of the Proposed Plan the Council has worked with Scottish Natural Heritage (SNH) and Scottish Environment Protection Agency (SEPA) to prepare an agreed revised wording for Policy EP6 (email of 13 July 2012 entitled Policy EP6: Lunan Valley Catchment Area - Revised Policy Wording) (S4_Doc_341) which mirrors the approach taken to dealing with phosphorus loading in the Loch Leven Catchment area under Policy EP7. This revised Policy EP6 wording would supersede both SNH and SEPAs suggested policy amendments proposed under representations (05211/15/001), (03194/8/002), and (03194/8/001).

Therefore, if the Reporter is minded to recommend the replacement of the existing Policy EP6 in the Proposed Plan with the proposed alternative wording set out in the

'modifications sought' section of this Schedule 4, the Council would be comfortable with this recommended modification as it would provide greater clarity and transparency for applicants as to which settlements and in what circumstances the provisions of the Plan's Policy NE1: International Nature Conservation Sites (S4_Doc_389) will apply for proposals arising under this policy, and would also set out what will be expected of them in making their planning application.

It is also considered that the suggested revised Policy EP6 would address the issues raised and modifications sought in the representations by CKD Galbraith (09289/17/001), Snaigow Estates (09289/18/001) and The Linklater Family (09289/14/003).

With specific reference to The Linklater Family's comment regarding Section 6.8 of the Plan, the reference to Policy EP7 in the last sentence of paragraph 6.8.2 (Proposed Plan page 174) (S4_Doc_425) is a typing error; it should read Policy EP6 instead.

In terms of the reference to the boundary at Concraigie made under representation Snaigow Estates (09289/18/001), this issue is dealt with in more detail in Schedule 4 no. 45 (Strathmore and the Glens Area – Small Settlements) (comment reference Snaigow Estates (09289/18/004).

SportScotland (03185/1/005): As the Proposed Plan is a land use planning document it is implied that the reference to recreational pursuits within the policy is related to development proposals for such activities and decision-making through the development management process will be made in accordance with the development plan, taking account of any material considerations related to the development and use of land in line with Article 37(2) of the 'Town and Country Planning (Scotland) Act 1997' (S4_Doc_342).

The Dunkeld-Blaigowrie Lochs are designated as a Special Area of Conservation (SAC) under the Habitats Directive (Core_Doc_029) for their internationally important habitats and species which are sensitive to disturbance. Despite there being an overarching nature conservation policy in the Plan to address International Nature Conservation Sites (NE1a) (S4_Doc_389), paragraph 9 of the Scottish Government's Habitats Regulations Appraisal (HRA) Advice Sheet: Screening general policies and applying simple mitigation measures (S4_Doc_343) advises that *'it is not sufficient to rely alone on an over-arching and/or general European site protection policy ... to resolve any potential effects on European site(s). Such policies cannot be used as a substitute for properly assessing the potential effects of a plan'*. Furthermore paragraph 8 states that *'as a general rule, policy caveats ... should be specific to the case, issue or proposal and/or the particular European site(s).'* (S4_Doc_343) As such it is necessary to include policy specific caveats within Policy EP6.

Through the HRA process for the Plan the potential for significant effects on the qualifying interests of the SAC were identified, largely due to a possible deterioration in water quality in the lochs as a result of development (Table 5.3, page 30 and Table 8.1, pages 98-99) (S4_Doc_144), and the suggested new policy wording previously provided in response to the representations by Scottish Natural Heritage (05211/15/001) and Scottish Environment Protection Agency (03194/8/001) takes this into account.

Although, the HRA process did not identify the potential for likely significant effects on the SAC linked to recreational pursuits, this was because that caveat was already in place within the policy. However, should it have been missing then the likely significant effects related to such activities would have been identified and an appropriate policy specific caveat, like the one already included under criterion (b), would have been suggested

through the appropriate assessment process. In making this representation it is unfortunate that SportScotland have not had regard to the duties placed upon all public bodies to have regard to the duty to further the conservation of biodiversity under Section 1(1) of the Nature Conservation (Scotland) Act 2004 (S4_Doc_477). Powered water sports are clearly an incompatible activity in this sensitive SAC which is also internationally renowned for its osprey nesting site.

No modification is proposed to the Plan.

EP6 - Lunan Valley General

Scottish Natural Heritage (05211/15/002): Section 6 of the Plan deals with the Highland Perthshire area, and paragraph 6.1.15 (Proposed Plan page 153) (S4_Doc_426) correctly notes that the only settlement within this area that also falls in the Lunan Lochs/Valley Catchment is Butterstone.

Section 9, paragraph 9.1.12 (Proposed Plan page 298) (S4_Doc_427) which refers to 'Housing within the Lunan Valley Lochs Catchment' does not make reference to the settlements in the Strathmore and the Glens area which are within that catchment. However, as it is highlighted in the 'Spatial Strategy Considerations' section for each of the settlements referred to in the respondents representation (apart from west of Blairgowrie, which is not within the settlement boundary) that they are within the catchment area, it is not considered necessary to repeat this in the introductory paragraph 9.1.12.

No modification is proposed to the Plan.

EP7 Drainage within the Loch Leven Catchment Area

Scottish Natural Heritage (05211/25/009);(05211/16/002); Scottish Environment Protection Agency (03194/9/001): It is considered that by amending policy EP7 and EP7B to incorporate the mitigation measures as set out in the Habitats Regulations Appraisal (including Appropriate Assessment) of the Proposed Plan (Core_Doc_096), and detailed in the 'modifications sought' section of this Schedule 4, it would provide greater clarity and transparency for applicants as to in what circumstances the provisions of the Plan's Policy NE1: International Nature Conservation Sites (S4_Doc_389) will apply for proposals arising under this policy. It would also set out what will be expected of them in making their planning application. These proposed amendments should satisfy the outstanding representations made by both Scottish Natural Heritage and Scottish Environment Protection Agency.

If the Reporter is so minded the suggested deletion and addition of text by the respondents should be made to policies EP7B and EP7 respectively, as detailed in the 'modification sought' section of this Schedule 4.

Kinross Community Council (00841/1/001): The recently published Scottish Natural Heritage Commissioned Report No.511: Water quality monitoring at Loch Leven 2008-2010 – Report of Results concludes that '*water quality improvements, which ... [they] attribute to catchment load reductions since the 1980s, have been sustained in 2008-2010*' (S4_Doc_344). This would suggest that the trend is not one of further degradation of water quality in the loch as a result of external phosphorus loading as indicated by the respondent.

Although Scottish Environment Protection Agency's (SEPA) 2010 River Basin Management data for Loch Leven (S4_Doc_349) classifies its overall ecological status as

'Poor' and overall chemical status as 'Pass', it sets the objective for 'Good' overall status by 2027 due to the complexity of the issues at the loch and also because the implementation of many of the mitigation measures required to help improve water quality rely on the actions of private land owners. The River Basin Management Planning (RBMP) process acknowledges that *'implementation of the measure[s] by an earlier deadline would impose disproportionate burdens'* (S4_Doc_349) on the landowners. The Loch Leven Catchment Management Plan (LLCMP) also reflects this longer term objective approach through acknowledging that the loch's *'phosphorus pollution problem will not disappear in the short term'* (S4_Doc_346).

In terms of seeking a more *'scientifically based rationale for permitting development'*, as previously mentioned, the water quality issues associated with the loch are complex, and according to the SNH monitoring report (paragraph 4.4) (S4_Doc_345) *'the main sources that contribute to the overall phosphorus content of the water...continue to vary significantly, resulting in contrasting water quality conditions.'* Factors relating to the internal and external loading of the loch include catchment pressures; weather; water quality; the effects of climate change, which little is currently known about; industrial practices; discharge of effluent, for which there is limited data available relating to the effectiveness of existing private septic tanks in the area, and soil erosion. However, due to a lack of data and/or trend information relating to a number of these factors it is not yet possible to apply a more scientific approach to the measurement of potential phosphorus output than is currently used.

As such, through the catchment management planning process, it was agreed to apply the Precautionary Principle in dealing with development proposals within the catchment area, and where developments were likely to breach Recommendation 29 of the LLCMP (S4_Doc_347), the developer would be required to show that mitigation measures, capable of removing 125% of the phosphorus likely to be generated by the proposed development, can be implemented. This is in order to ensure that there is no net increase.

In terms of the issue of increased flow rate during periods of heavy rainfall raised by the respondent, this matter was identified through the screening stage of the Habitats Regulations Appraisal (HRA) process for policies RC1 and RC4, and site proposals H46, Op17, Op18, and H51 (S4_Doc_145) and (S4_Doc_146). However, it was concluded for the site proposals that Policy EP3C: Surface Water Drainage (S4_Doc_428), which requires all new developments to employ Sustainable Urban Drainage System (SUDS) measures will ensure that development of these proposals, and other future Kinross-shire proposals, will slow down the flow and run off from new developments in the event of more severe flood events (S4_Doc_147). With respect to the two policies, the appropriate mitigation developed through the HRA process was a recommendation to include a requirement in the policies for the submission of a Construction Method Statement at planning application stage in order to protect watercourses within Kinross and Milnathort town centres, and ultimately Loch Leven, from the impact of pollution and sediment (S4_Doc_148).

Finally, with reference to the respondents suggestion that a condition is added to all sites within the catchment area to ensure that development is dependent on Scottish Water being able to deliver the capacity in the waste water treatment works (WWTW), it is argued that this is not necessary as it will be controlled by SEPA through the licensing process under The Water Environment (Controlled Activities)(Scotland) Regulations 2011 (CAR) (Core_Doc_168). Furthermore, at the MIR stage Scottish Water advised that currently there is capacity at Milnathort WWTW and very limited capacity at the Kinross

works, but that a growth project had already been instigated at Kinross (S4_Doc_348). They also state in their representation that they are '*...committed to working with developers and local authorities to enable development and do not see capacity issues as a constraint to development.*'

For cross referencing purposes, it is noted that SEPA (03194/22/001) in their representation to the Kinross and Milnathort infrastructure considerations section of the Proposed Plan (paragraph 7.2.3) (S4_Doc_429), have commented that the level of development allocated in the settlements of Kinross and Milnathort exceeds the current authorised drainage capacity available in the WWTWs, and that upgrading of the works may not be feasible due to constraints on discharges. As such they have recommended that '*in order to ensure that developers are fully informed of the potential constraint...that the wording in...section 7.2.3 is amended to reflect the fact that waste water drainage constraints may restrict the number of sites that can be brought forward.*' (Please note that this issue is dealt with in Schedule 4 no. 31(Kinross-shire Area – Kinross/Milnathort Settlement). However, bearing in mind the policy framework for the water environment set out in Policies EP3 (S4_Doc_428) and EP7, the regulating of activities which could have a potential impact on the water environment through the CAR regime, and also as the Council is committed to working in collaboration with Scottish Water, SEPA and developers to facilitate development, which could potentially include a new waste water treatment solution for the catchment area, it is considered that it is not necessary to add conditions to all sites within the catchment area or amend Section 7.2.3 (S4_Doc_429) of the Plan.

No modification is proposed to the Plan.

G S Brown Construction Ltd (09817/3/005); Homes for Scotland (10214/1/024): It is unclear what is meant in the representation by a '*long term solution*' (09817/3/005); however, as per the Council's response to Kinross Community Council (00841/1/001), the water quality issues associated with the loch are complex, and the main sources which contribute to the waters' phosphorus content continue to vary significantly (S4_Doc_345). Furthermore, due to a lack of data and/or trend information relating to a number of these contributors it is not yet possible to apply a more scientific approach to the measurement of potential phosphorus output than is currently used.

It is acknowledged that Planning Circular 1/2010 (S4_Doc_074) states that planning agreements should not be used to address existing deficiencies in infrastructure provision; however, the water quality issues within the catchment area are not solely infrastructure related, and the 125% mitigation requirement was developed through the catchment management planning process because the measuring of phosphorus loading is not an exact science, and it was therefore considered prudent to apply the Precautionary Principle in this area in order to ensure there is no net increase, and ultimately to safeguard the qualifying interests of the Special Protection Area. Loch Leven Catchment Management Plan (Recommendation 29) (S4_Doc_347).

No modification is proposed to the Plan.

Reporter's conclusions:

EP6: Lunan Valley Catchment Area

1. The original concerns of Scottish Natural Heritage (SNH) and the Scottish Environment Protection Agency (SEPA) about the detailed terms of Policy EP6 would be

addressed by adopting the agreed wording in the 'modifications sought' section above. That would bring the approach to the Lunan Lochs into line with the policy for Loch Leven, and would clarify the circumstances in which new development might be permissible within the catchment area. (The representation about the Congraigie settlement boundary is addressed under Issue 45.)

2. It would be inappropriate to remove the restriction on power boating activities which is incorporated in EP6(b), as suggested by sportscotland. The lochs affected are designated as a Special Area of Conservation and contain an important nesting site for osprey. The Proposed Plan requires to include policies which protect this internationally significant habitat from potentially damaging activities of that kind.

3. There is no need to list the settlements which lie within the Lunan Valley catchment area, as this constraint is highlighted in the detailed guidance on each of the affected settlements and on the accompanying plan.

Policy EP7: Drainage within the Loch Leven Catchment Area

4. It is important that the detailed terms of this key policy reflect the outcome of the Habitats Regulations Appraisal. The council is content that SNH's suggested changes to the introductory note and to EP7B(b) would achieve that objective. They would also address SEPA's anxiety to avoid the proliferation of private waste water drainage arrangements, and would provide greater clarity for would be developers in the catchment area.

5. The water quality problems in Loch Leven are well documented, but scientific monitoring indicates that water quality is continuing to improve, rather than degrade as Kinross Community Council fears. The long term objective is to improve the ecological status of the loch from 'poor' to 'good' by 2027. This time span reflects the need for SEPA to work with Scottish Water, farmers and private landowners on a range of measures to secure the desired improvements. SEPA's River Basin Management Planning water body information sheet accepts that imposing earlier deadlines would impose disproportionate burdens on the parties concerned.

6. Due to the wide range of factors which contribute to the poor water quality in Loch Leven it is impracticable to apply a more scientific approach to the control of development in the catchment area. Policy EP7, as revised, will meet the stringent requirements of SEPA and SNH. As discussed under Issue 31, Scottish Water has confirmed that there is capacity at Milnathort Waste Water Treatment Works, and that a growth project has been instigated at Kinross. Any upgrade of the waste water treatment works to accommodate additional development in Kinross will require a licence from SEPA under the CAR Regulations (and probably an appropriate assessment to ascertain whether they would adversely affect the integrity of the Special Protection Area).

7. Although the requirement in Policy EP7C to implement mitigation measures capable of removing 125% of phosphorus likely to be generated is unusual, it is well established and is justified in the special circumstances of Loch Leven. Policy 12 of the Kinross Area Local Plan, which contains a similar requirement, has been applied successfully in recent years. Given the seriousness of the problem of pollution in Loch Leven, and the international importance of the loch as a Special Protection Area and Ramsar site, it is imperative that recent progress is not reversed by the impact of new development in the catchment area.

8. The council is justified in applying a safety margin of 25% to reflect the uncertainties about occupancy rates and the behaviour of householders which affect the phosphorus loadings associated with new development. Otherwise there is a risk that phosphorus pollution would increase rather than reduce, contrary to the objectives of the Water Framework Directive. The relevant provision in Policy EP7 should therefore remain.

Reporter's recommendations:

Policy EP6: Lunan Valley Catchment Area

1. Replace Policy EP6 with the following:

"The Council will protect and seek to enhance the nature conservation and landscape interests of the Lunan Valley Catchment Area. Within the area:

- (a) there will be a presumption against built development except: within settlements; for renovations or alterations to existing buildings; and developments necessary for economic need which the developer can demonstrate will have no adverse impact on the environmental assets of the area nor are likely to result in an unacceptable increase in traffic volumes;*
- (b) recreational pursuits like power water sports, likely to cause disturbance in and around sites of nature conservation interest, will be discouraged;*
- (c) tree planting should be predominantly native species, including Scots Pine, except in cases where it can be proved that the landscape diversity will be improved by the use of a more varied range of species. All planting should be designed to complement the landscape.*

Total phosphorus from built development must not exceed the current level permitted by the existing discharge consents and the current contribution from built development within the rural area of the catchment. Where improvements reduce the phosphorus total from the built development, there will be a presumption in favour of retaining such gains to the benefit of the ecological recovery of the Lunan Lochs.

All applicants will be required to submit details of the proposed method of drainage with their application for planning consent and adopt the principles of best available technology, not entailing excessive costs, to the satisfaction of the Planning Authority in conjunction with SEPA.

Note 1: Policy RD3: Housing in the Countryside is limited to economic need, conversions or replacement buildings within the Lunan Valley Catchment Area.

Note 2: Development within the catchment must comply with the general drainage policies as well as policies relating to the catchment area. Supplementary Guidance details the procedures to be adopted for drainage from development in the Lunan Valley area (produced by SEPA/SNH and the Council)."

Policy EP7 Drainage within the Loch Leven Catchment Area

2. Amend the 'Note' at the start of Policy EP7 on page 56 to read:

"Note: Development within the catchment must comply with the general drainage policies as well as policies relating to the catchment area. To ensure there are no adverse impacts, either individually or in combination, on water quality in Loch Leven SPA."

3. Delete first section of EP7B (b) *"where, for a non-residential development, it is not economic to connect to the public system and.."*