

Issue 18	Water Catchment Areas	
Development plan reference:	Policy 43 Lunan Lochs Catchment Area Policy 44 Loch Leven Catchment Area Policy 45 River Tay Catchment Area Policy Map G; Water Catchment Areas	Reporter:
Body or person(s) submitting a representation raising the issue (including reference number):		
Scottish Natural Heritage (SNH) (0353) Royal Society for the Protection of Birds (RSPB) (0546) Councillor Michael Barnacle (0584) Scottish Environment Protection Agency (SEPA) (0742)		
Provision of the development plan to which the issue relates:	Policy 43 Lunan Lochs Catchment Area (page 72) Policy 44 Loch Leven Catchment Area (page 73) Policy 45 River Tay Catchment Area (page 74) Policy Map G; Water Catchment Areas (page 75)	
Planning authority’s summary of the representation(s):		
<u>Reference to Supplementary Guidance</u>  SNH (0353/1/014): Supports policy 43 and reference to River Tay SAC Planning Guidance (CD383), recommends including link to guidance.  SNH (0353/1/015): Supports policy 44 and reference to Loch Leven SPA Planning Guidance (CD384) recommends including link to guidance.  SNH (0353/1/016): Supports policy 45 and reference to River Tay SAC Planning Guidance (CD383), recommends including link to guidance.  <u>Policy 44 Loch Leven Catchment Area (p 73)</u>  <i>Rewording</i> RSPB (0546/1/12): Supports overall requirements but notes wording is difficult – first sentence of 44C refers to developments likely to breach policies 44A and 44B but policy 44C sets out requirements in relation to mitigation that if met would allow compliance with Policies 44A and 44B. Suggest restructuring so that requirements more concise e.g. combine the 3 sub policies to instead present 3 options for applicants then set out requirements in each case. Policy should also clearly indicate the applications / proposed developments to which it applies i.e. development within LLCA as indicated on policy Map G by adding “within the Loch Leven Catchment Area (as indicated on Policy Map G” in first paragraph.  SEPA (0742/1/012): Supports policy wording as accords with Scottish Planning Policy (SPP) (CD004) para 194-195 and local authority statutory duties.  <i>Settlement Summaries</i>  RSPB (0546/01/015B): Requests additional wording for settlement summaries for Crook of Devon & Drum, Glenlomond, Kinnesswood, ‘This settlement lies within the Loch Leven		

Catchment Area and so any development should comply with Policy 44: Loch Leven Catchment Area' to ensure consistency in the plan.

Note: RSPB (0546/1/015A) also sought a modification in relation to references to the Loch Leven Catchment in the settlement summaries for Balado, Carnbo, Cleish, Greenacres, and Wester Balgedie. The Council confirms it intends to address this separately through a non-notifiable modification as set out in the non-notifiable modifications list (CD375).

#### *Protocol*

Cllr Michael Barnacle (0584/1/016): Policy fails to mention protocol between SEPA, SNH and PKC which needs to be reviewed due to lack of effectiveness in retrospective applications.

#### Policy 45 River Tay Catchment Area (page 74)

SNH (0353/04/001): Following the completion of the Habitats Regulations Assessment (HRA) SNH have updated their holding representation to now recommend amendments to the Proposed Plan in line with the outcomes of the HRA and Appropriate Assessment. Policy 45 should reflect the outcome of the Habitats Regulations Appraisal (CD056, Table 5.22, pages 102-103 and Table 5.23, page 108)

RSPB (0546/01/016): Consistency is required in the Plan to ensure that the settlement summaries of all settlements which lie within the River Tay Catchment Area include reference to this fact to help ensure that permission is not granted for development which would adversely affect the integrity of the River Tay SAC.

#### Policy Map G; Water Catchment Areas (page 75)

SNH (0353/1/016): Supports inclusion of water catchment areas in Policy Map G

RSPB (0546/1/013) Catchment area maps are unclear and cannot be read. Maps should be replaced by larger and clearer versions (one map per page).

Note: RSPB (0546/1/013) also sought a modification in the plan specifically in relation to the map of the River Tay Catchment. The Council confirms that it intends to address this separately through a non-notifiable modification as set out in Non-notifiable Modifications (CD375).

#### **Modifications sought by those submitting representations:**

##### Reference to Supplementary Guidance

SNH (0353/1/014): Include link to River Tay Special Area of Conservation Guidance in Policy 43

SNH (0353/1/015): Include link to Loch Leven SPA Planning Guidance in Policy 44

SNH (0353/1/016): Include link to River Tay SAC Planning Guidance in Policy 45

#### Policy 44 Loch Leven Catchment Area (p 73)

#### *Rewording*

RSPB (0546/1/12): Suggest restructuring so that requirements more concise e.g. combine

the 3 sub policies to instead present 3 options for applicants then set out requirements in each case. Policy should also clearly indicate the applications / proposed developments to which it applies i.e. development within LLCA as indicated on policy Map G by adding “within the Loch Leven Catchment Area (as indicated on Policy Map G” in first paragraph.

#### *Settlement Summaries*

RSPB (0546/01/015): Requests additional wording for settlement summaries for Crook of Devon & Drum, Glenlomond, Kinnesswood, ‘This settlement lies within the Loch Leven Catchment Area and so any development should comply with Policy 44: Loch Leven Catchment Area’ to ensure consistency in the plan.

#### *Protocol*

Cllr Michael Barnacle (0584/1/016) not specific about change sought but notes Policy fails to mention protocol between SEPA, SNH and PKC.

#### Policy 45 River Tay Catchment Area (p 74)

SNH (0353/04/001): Reference to Fearnan and Kinloch Rannoch should also be added to the list of settlements included under the first paragraph in Policy 45 of the Proposed Plan.

RSPB (0546/01/016): Add the following sentence to the settlement summaries for Aberfeldy; Coupar Angus; Cromwell Park and Pitcairngreen; Dunkeld and Birnam; Fearnan; Kenmore; Kinfauns; Kinloch Rannoch; Luncarty; Murthly and Gellyburn; Stanley: "This settlement lies within the River Tay Catchment Area. Policy 45 sets out the relevant criteria for development in this area."

#### Policy Map G; Water Catchment Areas (p75)

RSPB (0546/1/013). Replace maps with larger and clearer versions (one map per page).

### **Summary of responses (including reasons) by planning authority:**

#### Reference to Supplementary Guidance

The Guidance including that for the Lunan Lochs (CD384) is referred to at the bottom of each policy and all guidance is available on the Supplementary Guidance section of the Council website.

No modification is proposed.

#### Policy 44 Loch Leven Catchment Area (p 73)

#### *Rewording*

RSPB (0546/1/12): It is accepted that the reference to mitigation in policy 44C is unnecessary and confusing as mitigation is already addressed in 44B. However a rewrite of the full policy is not required. The references to mitigation in Policy 44C are more appropriate to be included in Policy 44B and can be moved here. This would leave 44C containing only the phrase “Developments which are likely to breach policies 44A and 44B will not be permitted.” In the context of the requirements of 44A and 44B this phrase becomes redundant and policy 44C can therefore be deleted. SNH, SEPA and the RSPB have agreed to this modification.

If the Reporter is minded to agree to the modification the Council would not object to the following modifications:

- i) Adding the words in italics to Policy 44B as follows:

Developments within the Loch Leven catchment area will be required to connect to a publicly maintained drainage system incorporating phosphorus reduction measures. Exceptions will only be permitted where one of the following criteria can be met:

- (a) where drainage can be diverted outwith the catchment; or
- (b) where the developer is able to implement acceptable mitigation measures consistent with the Council's published Guidance, *that are capable of removing 125% of the phosphorus likely to be generated by the development from the catchment.*

Applications for planning consent not connecting to the Kinross or Milnathort waste water treatment works will be required to provide an assessment of phosphorus input for the development. Evidence of phosphorus impact of the development will be required from a suitably qualified person. In cases of great complexity or uncertainty the Precautionary Principle will be adopted.

*The requirements of this policy may be secured by means of legal agreements and planning conditions to deliver planning obligations concluded between the applicant and the Council, prior to the issue of planning permission. The delivery of agreed phosphorus mitigation will be required before the occupation of any new dwelling.*

*Mitigation measures should not include measures which are already committed in a spending programme and likely to be implemented by a statutory body within three years of the determination of the application.*

- ii) Deleting Policy 44C

### *Settlement Summaries*

RSPB (0546/01/015B): While Crook of Devon & Drum, Glenlomond, Kinnesswood are within the Loch Leven Catchment area have waste water treatment centres that either do not discharge into the catchment of Loch Leven or are publically maintained. Development here is required to connect to the public waste water system. Only settlements with potential for significant impacts on the qualifying interests of Loch Leven SPA have been identified through the HRA as requiring qualification

No modification is proposed.

### *Protocol*

Cllr Michael Barnacle (0584/1/016): The protocol sits outside the Development Plan and helps inform the shape, implementation and monitoring of the Policy. It is not directly relevant to development proposals and unnecessary to include a reference here.

No modification is proposed.

Policy 45 River Tay Catchment Area (p 74)

SNH (0353/04/001): It is considered that amending Policy 45 to incorporate the mitigation measures as set out in the Habitats Regulations Appraisal (CD056) of the Proposed Plan, and detailed in the previous section, would provide greater clarity and transparency for applicants as to which settlements and in what circumstances the provisions of the Plan's Policy 36A: International Nature Conservation Sites will apply for proposals arising under these policies. It would also set out what will be expected of them in making a planning application.

If the Reporter is so minded the suggested additional text by the respondent should be added to Policy 45 as detailed in the 'Modifications Sought' section.

RSPB (0546/01/016): A reference to Policy 45 is included within some settlement summaries where this has been identified as a mitigation measure through the HRA (CD056). No such mitigation measure has been identified for the settlements referred to in the representation, with the exception of Fearnan and Kinloch Rannoch, which have been addressed under Issue 37 Highland Area - Settlements without Proposals.

As discussed in Issue 37 (Highland settlements without proposals), the suggested additional text should be added to the settlement summaries of Fearnan and Kinloch Rannoch in order to provide greater clarity and transparency for applicants. There is no modification proposed however to any of the other settlement summaries referred to by the respondent.

#### Policy Map G; Water Catchment Areas (page 75)

RSPB (0546/1/013): The maps give an indication of the boundaries of the respective areas, more detailed guidance and maps are provided in the supplementary guidance referred to in the Policy Note of each policy (CD020, CD383, CD384) and available on the Council's website (<http://www.pkc.gov.uk/article/15055/Supplementary-guidance-Loch-Leven-SPA-the-Dunkeld-Blairgowrie-Lochs-SAC-and-the-River-Tay-SAC>).

No modification is proposed.

#### **Reporter's recommendations:**