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Our Ref: ENJ/LIA/AF/CLAF

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Dear Mr Dean

**LAND REFORM (SCOTLAND) ACT 2003, SECTION 18 (1) CORE PATHS PLAN:
CLACKMANNANSHIRE CORE PATHS PLAN**

Thank you for the letter of 14 July 2008 to Scottish Natural Heritage (SNH) as a statutory consultee under the Land Reform (Scotland) Act 2003 (the Act), inviting representations or objections over the draft Core Paths Plan (CPP) for Clackmannanshire Council.

SNH welcomes the opportunity to comment on this plan, which has been drawn up according to the provisions of Section 17 (1) of the Act, which states that *'It is the duty of the local authority, not later than 3 years after the coming into force of this section, to draw up a plan for a system of paths ("core paths") sufficient for the purpose of giving the public reasonable access throughout their area.'*

SNH SUMMARY POSITION

SNH **supports** this plan, but recommends that consideration is given to a number of points which are detailed below, and which we think would improve the overall functionality of the plan.

DETAILS

Presentation

The maps are clear and well presented, though the area of Gartmorn Dam coloured purple doesn't give any indication of a path or route, and rather just general access to part of the water body. Instead of marking a general area of access over the water as core path, it would be more informative to mark launch and landing points, by say a purple spot, to indicate access to and from the loch from core paths on land.

The supporting text lacks some important information. It should include some of the analysis of consultation results and a summary of the outcomes from the consultation process, to provide some measure, or indication, of how far the Core Paths Plan has gone in meeting the needs of communities and landowners (see further comments under sufficiency heading below). Reference could also be made to any future opportunities or aspirations for the Core Paths Plan that may have arisen out of the consultations, and how the Core Paths will be managed and developed in the future.

Any paths that are not shown now in the draft Core Paths Plan but are likely to be core paths within two years of the plan's adoption should be included as core paths within the adopted Core Paths Plan. Longer term future planned routes are also worth recording separately, as they may be able to inform other formal planning processes, such as the Local Plan or Community Plans.

The Core Paths Plan also provides an opportunity to highlight how it will help deliver broader objectives. For example, reference should be made to the Council's Outdoor Access Strategy and Local Plan policies, and links made to other relevant Council strategies and policies for transport, physical activity and economic development. Reference could also be made to key national government policies such as Scottish Planning Policy 11 - Open Space and Physical Activity.

Sufficiency

Overall, we believe that the draft Core Paths Plan is sufficient for the purpose of giving the public reasonable access throughout Clackmannanshire, and all key settlements seem to be well served. However, there may still be room for some improvement in coverage, and more information could be provided regarding the accessibility of the path network for different users.

The supporting text shows that an appropriate set of core path criteria were established and that a comprehensive public consultation process was undertaken. However, the text provides no analysis of public or landowner contributions to the consultation process, nor the reasons for the removal or addition of certain paths, and doesn't indicate how the plan has taken account of the findings from the consultation. For example, one area that stands out as having fewer paths than elsewhere is the southeast area of the county surrounding Forest Mill, but it isn't clear how much demand there was for access in this area from the little information provided regarding the public consultation.

The supporting text also provides little information regarding the surface or nature of each of the paths, which makes it difficult for users with particular needs (such as wheelchair users, horse-riders and cyclists) to determine which paths or routes may be suitable for them.

The inclusion of the information referred to above will help demonstrate that the plan has taken proper account of representations made as part of the consultation process so far, and that the draft plan has been designed to meet the needs of all users.

Connectivity with neighbouring Core Paths Plans

Good connections seem to be made with all of the neighbouring local authorities. The only obvious gap is again in the Forest Mill area and across from there into Fife. Although the routes out from Clackmannanshire are in place, it isn't made clear that paths ending at the Clackmannanshire boundary all connect with core paths proposed by the neighbouring authority. This should be confirmed in the adopted plan. Core Paths Plans for neighbouring authorities will be at different stages and may possibly undergo alterations. We therefore recommend that a final check or review of cross boundary connections is made prior to adoption.

Proposals affecting designated natural heritage sites

The paths included in the draft Core Paths Plan all appear to be established paths, and so the plan is unlikely to have a significant effect on designated natural heritage sites. However, any planned activities in relation to core paths should be assessed carefully for possible impacts on designated natural heritage sites, including the following:

- constructing new paths;
- upgrading existing path;
- changing maintenance regimes; or
- improving promotion in ways that are likely to increase path use or change the type of use, including by dogs.

In relation to Natura interests, Regulation 69A(1)(a) of the [Conservation \(Natural Habitats, &c.\) \(Scotland\) Regulations 1994](#), as amended by Schedule 2 of the [Land Reform \(Scotland\) Act 2003](#), indicates that Regulations 48 and 49 of the 1994 Regulations (requirement to consider effect on a European site) apply to a local authority's proposal to draw up or change a plan for core paths. This means that the Core Paths Plan should be assessed for likely significant effects on the qualifying features of the Natura sites. If there are likely significant effects, an appropriate assessment is required (see Appendix 1 for more information regarding legislative requirements). If details of construction, maintenance or promotion are not yet known, a statement should be included in the plan that no activities to implement the core paths will be undertaken if they could affect Natura sites, unless the access authority has first ascertained that the proposals will not adversely affect the integrity of any site.

In Clackmannanshire, this applies to implementation activities likely to affect the waterfowl interest of the Firth of Forth Special Protection Area (SPA), and in particular to activities associated with paths 23 and 26. If necessary, SNH can provide further advice regarding the likely impacts of any activities affecting the Firth of Forth SPA once details are known.

Sites of Special Scientific Interest (SSSI) should also be considered if any activities outlined above are planned (information on designated areas can be found through the SNHi icon on our website homepage www.snh.org.uk).

Biodiversity duty

Part 1 of the Nature Conservation (Scotland) Act 2004 requires every public body and their office-holders to further the conservation of biodiversity. We therefore recommend that reference is made to the Scottish Biodiversity List and to the aims and objectives of the Scottish Biodiversity Strategy. We mention this in the context of the Core Paths Plan because of the potential to disturb species or damage habitats during path developments and upgrades (eg. cutting back vegetation during the bird breeding season). The species affected may include European Protected Species (EPS), e.g. bats, otters, great crested newts for which there are particular legislative requirements (see Appendix 2 for details), or other protected species, which would require due consideration.

Conclusion

Overall SNH supports the Clackmannanshire Council's Core Paths Plan as currently drawn up, though we make some recommendations for its improvement.

Please let me know if you need any further information or advice from SNH in relation to this plan. I would be grateful if you could let us know of your Council's decision in due course or of any further changes to the plan which would be relevant to our interests

Yours sincerely

Michael Shepherd
Area Officer
Tayside & Clackmannanshire

Appendix 1

Legislative Requirements for European Sites

The site's status as a classified SPA under the EC Directive 79/409/EEC on the Conservation of Wild Birds (the "Birds Directive"), means that the Conservation (Natural Habitats, &c.) Regulations 1994 as amended; (the "Habitats Regulations") apply. The requirements are summarised in SE Circular 6/1995 as amended June 2000 and include, at paragraph 12,

"The Regulations (48) require that, where an authority concludes that a development proposal unconnected with the nature conservation management of a Natura 2000 site is likely to have a significant effect on that site, it must undertake an appropriate assessment of the implications for the conservation interests for which the area has been designated."

Under Regulation 48 of the Habitats Regulations, this means that Clackmannanshire Council, as competent authority, has a duty to:

- determine whether the proposal is directly connected with or necessary to site management for conservation; and, if not,
- determine whether the proposal is likely to have a significant effect on the site either individually or in combination with other plans or projects; and, if so, then
- make an appropriate assessment of the implications (of the proposal) for the site in view of that site's conservation objectives.

The competent authority can only agree to the proposal under Regulation 48 after having ascertained that it will not adversely affect the integrity of the site. If this is not the case, and there are no alternative solutions, the proposal can only be allowed to proceed if there are imperative reasons of overriding public interest, which in this case can include those of a social or economic nature. If you propose to approve the plan on the grounds of imperative reasons of overriding public interest then Regulation 49 states that you must inform Scottish Ministers and you must not issue approval for a period of 21 days after receipt by Scottish Ministers unless notified otherwise. If proposals are allowed to proceed in accordance with Regulation 49 then it should be noted that Regulation 53 requires that Scottish Ministers shall secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected.

Appendix 2

Legislative Requirements for European Protected Species

Regulations 39 and 43 of The Conservation (Natural Habitats &c.) Regulations 1994 (as amended) (Habitats Regulations) provide full protection for certain animal and plant species. The species identified above are referred to as European protected species and are listed on Schedules 2 (animals) and 4 (plants) of the Habitats Regulations.

This means it is illegal to:

- Deliberately or recklessly capture, injure or kill a European protected species of wild animal or to deliberately or recklessly (i) harass an animal or group of animals; (ii) disturb an animal while it's occupying a structure or place used for shelter or protection; (iii) disturb an animal while it's rearing or otherwise caring for its young; (iv) obstruct access to a breeding site or resting place, or otherwise deny the animal use of the breeding site or resting place; (v) disturb an animal in a manner that is, or in circumstances which are, likely to significantly affect the local distribution or abundance of the species to which it belongs; (vi) disturb an animal in a manner that is, or in circumstances which are, likely to impair its ability to survive, breed or reproduce, or rear or otherwise care for its young
- Deliberately or recklessly take or destroy its egg
- Deliberately or recklessly disturb any cetacean
- Damage or destroy the breeding sites or resting places of such animals
- Deliberately or recklessly pick, collect, cut, uproot or destroy European protected species of wild plant

Where it is proposed to carry out works which will affect European protected species or their shelter/breeding places, whether or not they are present in these refuges, a licence is required from the licensing authority (in this case likely to be Scottish Government). It is strongly advised that you refer to the Scottish Government information on the current interim licensing arrangements, which can be found in the document *European Protected Species, Development Sites and the Planning System: Interim Guidance for Local Authorities on Licensing Arrangements*, (October 2001) before applying for a licence. Copies of this are available at <http://www.scotland.gov.uk/library3/environment/epsg-00.asp> or by writing to the Landscapes and Habitats Division, Scottish Government Rural Directorate, Room GH 93, Victoria Quay, Edinburgh EH6 6QQ or by telephoning 0131 244 7140.

As highlighted in the Interim Guidance, three tests must be satisfied before the licensing authority can issue a licence under Regulation 44(2) of the Conservation (Natural Habitats &c.) Regulations 1994 (as amended) to permit otherwise prohibited acts. An application for a licence will fail unless all of the three tests are satisfied. The three tests involve the following considerations:

- Test 1 - The licence application must demonstrably relate to one of the purposes specified in Regulation 44(2) (as amended). For development proposals, the relevant purpose is likely to be Regulation 44(2) (e) for which Scottish Government is currently the licensing authority. This regulation states that licences may be granted by Scottish Government only for the purpose of *“preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment.”*
- Test 2 - Regulation 44(3) (a) states that a licence may not be granted unless Scottish Government is satisfied *“that there is no satisfactory alternative”*.
- Test 3 - Regulation 44(3)(b) states that a licence cannot be issued unless Scottish Government is satisfied that the action proposed *“will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range”* (Scottish Government will, however, seek the expert advice of Scottish Natural Heritage on this matter).

Consideration of European protected species must be included as part of the planning application process, not as an issue to be dealt with at a later stage. Any planning consent given without due consideration to these species is likely to breach European Directives with the possibility of consequential delays or the project being halted by the EC, as has happened previously.