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NatureScot Consultation - Developing with Nature guidance

Background

Scotland's Fourth National Planning Framework 4 (NPF4) has been published in draft and is currently out for consultation. Once adopted, NPF4 will form part of the development plan. Part 3 of NPF4 is the "National Planning Policy Handbook" and sets out policies for use in, amongst other things, the development management process.

Draft Guidance on Local Development Planning, also currently out for consultation, states that "the expectation is there will be minimal thematic policy wording in the Proposed Plan. Thematic policies are contained in the NPF, which has the status of the Development Plan in decision making". As such, it is important that the policies of the adopted NPF4 are written clearly to deliver the desired outcomes.

Policy 3: Nature Crisis is intended to help the planning system deliver nature recovery and is to be welcomed in principle. It chimes with the Council's declaration of a joint climate and ecological emergency in 2019 and the current development plan position that new development should enhance biodiversity.

The policy is in five parts, with: part a) setting out how development plans should facilitate biodiversity enhancement; part b) setting out a general requirement that development proposals should contribute to the enhancement of biodiversity; part c) setting out how potential adverse impacts on biodiversity should be minimised through careful planning and design; and part d) dealing with larger developments and stating that they should only be supported where it can be demonstrated that they will conserve and enhance biodiversity so that it is in a demonstrably better state than without intervention.

Part e) of the policy sets out what is required of local developments. It states that "proposals for local development should only be supported if they include appropriate measures to enhance biodiversity, in proportion to the nature and scale of development". To support this policy, NatureScot have developed draft guidance to inform understanding of how policy 3e) should work in practice. Specifically, the guidance provides advice on the "appropriate measures" specified in the policy.

Comments on the draft guidance are to be submitted on a survey form by 4 March 2022, with the survey form seeking views on the following matters:

- 1. The list of measures and features identified in the guidance - are these the appropriate ones, and are there any others that should be included?*
- 2. The level of detail provided on each of the individual measures and features – is there adequate information set out to inform understanding of the range of biodiversity measures that can be incorporated in a development?*
- 3. The clarity and accessibility of the guidance as a means of a) informing project design, and b) decision making on the measures to be included in individual applications?*

Comments on these matters are set out below and will be replicated on the online survey form. Comments on the wording of Policy 3 will be submitted to the Scottish Government under the NPF4 consultation.

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1. The list of measures and features identified in the guidance - are these the appropriate ones, and are there any others that should be included?

The draft guidance sets out detail on 23 “appropriate measures” under three headings: Planting for Nature; Providing Homes for Nature; and Managing Water with Nature. For each measure, a description is provided and the considerations that should be taken into account when determining whether it is appropriate, including:

- an overview of what benefits the measure provides for nature;
- the key requirements for successfully implementing the measure;
- a description of the management effort required to maintain the measure;
- other measures that the measure particularly complements;
- nature notes providing general information of wider interest; and
- web links to sources of further information on delivering the measure

The measures themselves appear to be appropriate and the level of detail provided is, in general, appropriate in informing decision making on proposals. The draft guidance states that the appropriate measures listed are not exhaustive but it is considered that this could be highlighted to a greater extent, especially as innovative solutions might be required on gap or infill sites in densely developed environments.

There are some concerns over the detail of some of the measures:

- Measure 1: Planting for Pollinators - the emphasis put on private gardens in delivering enhanced biodiversity measures is of concern. Enhancement delivered in private gardens, unless maintenance is factored or under communal control, *cannot be guaranteed* in the medium to longer term as the planning system has little control over the use of the garden once handed over by the developer – eg householders replacing natural planting with artificial lawn or hard landscaping. As a result, it is debatable whether reference to the use of private gardens should be retained in the guidance;
- Measure 4: Trees, Scrub and Woodland - details of good example engineering studies and maintenance costs for Street and Feature Trees would be welcomed as part of the “Further Information” section, as this can often be considered a cost barrier for potential adopted footways and roadways;
- Measure 5: Living Roofs - Green, Brown and Blue - the advice on ‘solar biodiverse roofs’ in the guidance is useful and illustrates the value of a holistic consideration of all policy objectives in choosing appropriate measures eg the need to deliver low and zero carbon generating technologies alongside biodiversity or SUDs considerations. Examples in the final document would be welcomed; and
- Measure 9: Hibernacula – there are concerns over the reference to the deployment of “Beetle Buckets” to deliver underground habitat and shelter for beetles. Plastic buckets should not be buried as they will eventually break up and contribute to plastic pollution in our soils.

In relation to the “Future Management” sections of the measures, recognition of the importance of management plans/maintenance is welcomed. However, it is considered that these sections could be more ambitious with their aims. Ongoing maintenance can be particularly problematic in ensuring the success of a site’s positive contribution to biodiversity and the guidance should emphasise the need for consideration of long-term as well as short-term, maintenance requirements.

It would be helpful if the guidance should specify that maintenance plans should be submitted at the Planning Application stage rather than delivered through Matters Specified in Condition(s). Where

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there may be a potential breach of planning control in regard to the proposed biodiversity measures, this would help ensure delivery, given the relatively low fines for a breach of condition vs. a breach of planning control.

The term “nature benefitted” as a descriptor of the benefits the measure provides for nature is clumsy and implies that benefits have already been achieved. “Benefits to Nature” would be better.

The recognition, in the guidance, that the biodiversity measures identified are in addition to first avoiding, then minimising and finally compensating for adverse effects on nature is welcomed.

2. The level of detail provided on each of the individual measures and features – is there adequate information set out to inform understanding of the range of biodiversity measures that can be incorporated in a development?

The level of detail on each of the appropriate measures is considered adequate to inform understanding of the range of biodiversity measures that can be incorporated in a development.

3. The clarity and accessibility of the guidance as a means of a) informing project design, and b) decision making on the measures to be included in individual applications?

The ambitions of the policy and guidance are to be welcomed. However, it is considered that the guidance, as currently drafted, will not achieve the desired outcome of part e) of policy 3, in enhancing biodiversity in proportion to the nature and scale of development. In essence, the draft guidance is descriptive in its nature – it sets out the measures that development can incorporate to enhance nature but detail on the process that should be undertaken to ensure this is the case is, at best, underdeveloped.

One paragraph (37) is dedicated to this matter. It states that “it will be for the Planning Authority to decide whether [the measures selected] are appropriate in the circumstances of a particular application, and whether [they] are considered proportionate” and suggests taking into account a number of considerations, including:

- the nature, scale and location of the development;
- the nature, quantity, cost and future management requirements of the measures proposed;
- the time required to deliver benefits and any uncertainty in achieving this; and
- the opportunities the development presents for enhancement

There are a number of concerns over this approach:

- Critically, paragraph 37 establishes no set methodology, nor requirement, for determining the extent to which biodiversity should be enhanced or how this should be measured.
- It leaves the assessment of the appropriateness of the measures submitted by applicants entirely to the planning authority. This:
 - will put additional, resource intensive requirements on local authority staffing (planning and ecological) at a time when the requirements of the Planning (Scotland) Act 2019 are already increasing demands on local authorities. There are concerns that, in attempting to meet all new and existing requirements, the process of assessing measures for enhancement will be accorded little time and will not deliver the intended outcomes;
 - may well give rise to the development and use of a number of different methodologies for assessing appropriateness across Scotland, on the part of both local authorities and applicants. This is likely to put additional strains on local authority staffing, as planners and

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others attempt to get to grips with a number of different methodologies, and will not provide the clarity or consistency sought by the development industry.

Glasgow City Council determined 847 local non-householder applications in 2019-20 (largely pre-COVID) and 611 in 2020-21 (during COVID). The significant number of applications that would be subject to part e) of Policy 3 makes it important that the policy and guidance are drafted in a way to minimise ongoing demands on Council staff. A single, consistent and Scotland-wide approach to determining the degree of enhancement required and the means by which it is to be measured would help address this issue, providing clarity and certainty for local authorities and developers alike and minimising ongoing resource demands.

The scope of the guidance is only to provide advice on the “appropriate measures” specified in policy 3 e) and its potential effectiveness is limited by this ambition. It is recognised that the non-statutory nature of the guidance means that the use of a Scotland-wide means for measuring biodiversity enhancement is something best addressed in the NPF4 policy itself – the Council will be making representations on this matter in its response to the draft NPF4. Without such an embedded approach, in either (or both) policy or guidance, the likelihood of delivering biodiversity enhancement in local development is greatly diminished. The Council would be happy to work with/support NatureScot and others on developing such an approach.

Other issues that require to be clarified include:

- Para 5 of the guidance states that biodiversity should be considered from the outset to ensure that all opportunities to enhance nature are taken. This is welcomed, but how will the guidance help ensure that *all* opportunities are taken? How is this to be assessed and determined? And how does this tally with the policy 3 statement that local development should only be supported if they include appropriate measures to enhance biodiversity, in proportion to the nature and scale of development? Is this the equivalent of taking *all* opportunities to enhance nature?
- Clarity is required on the status of the guidance. It would appear that it is not to form part of the development plan, but will its use alongside NPF4 be endorsed by the Scottish Government?
- Further clarity on the type of development that the guidance will be applicable to would be welcomed – eg will it encompass all local non-householder proposals which could include things like shopfront alterations? Clarity is required in either Policy 3 or in the guidance.
- Para 29 addresses the factors to consider when selecting appropriate biodiversity measures, the first of which is “ecological considerations”. There would be merit in mentioning ecological considerations nearer the beginning of the document to emphasise the importance of multifunctionality and consideration of the context of the site.

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