

CAIRNGORMS NATIONAL PARK

PLANNING SERVICE PROTOCOL

Purpose and Context

Purpose:

- I. This Protocol sets out the voluntary agreement between the Cairngorms National Park Authority (CNPA) and the five Local Authorities (Aberdeenshire, Angus, Highland, Moray, Perth and Kinross) who all work together in the exercise of planning functions within and affecting, the Cairngorms National Park. This Protocol aims to:
 - a) Draw together the legislative background and policy relating to planning in the National Park in one place so that all interested parties can see how the arrangements work;
 - b) Describes the process for the preparation and adoption of the Local Development Plan and the roles of CNPA and local authorities in its implementation;
 - c) Sets out the detailed working arrangements in relation to development management and enforcement; and
 - d) Sets out the use of powers by CNPA and local authorities in relation to specific functions including tree preservation orders, conservation areas, etc;

Legislative Context:

2. The aims of the National Park are set out in Section 1 of the National Parks (Scotland) Act 2000 (the Act):
 - a) To conserve and enhance the natural and cultural heritage of the area;
 - b) To promote sustainable use of the natural resources of the area;
 - c) To promote understanding and enjoyment (including enjoyment in the form of recreation) of the special qualities of the area by the public; and
 - d) To promote sustainable economic and social development of the area's communities.
3. The statutory purpose of the CNPA, as set out in Section 9 (1) of the Act, is to ensure that National Park aims are collectively achieved in a co-ordinated way. Section 9(6) of the Act provides that if, in relation to any matter, it appears to the CNPA that there is a conflict between the first and other National Park aims, the CNPA must give greater weight to the first aim, namely to conserve and enhance the natural and cultural heritage of the area.
4. The Cairngorms National Park was designated under the Cairngorms National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2003 ("the Designation Order"). The Designation Order was amended by the Cairngorms

National Park Modification Order 2010 which facilitated the extension of the National Park into Perth and Kinross

5. The National Park Partnership Plan is the management plan for the National Park and is drawn up under the requirements of Section 11 of the Act and is signed off by Ministers. The Plan provides the Strategic context for the Local Development Plan. There is a general duty in Section 14 of the National Parks (Scotland) Act 2000 for any public body or office- holder to have regard to the National Park Plan in exercising functions affecting a National Park. Paragraph 18 of Schedule 5 of the Act has amended the Town and Country Planning (Scotland) Act 1997 to the effect that decisions on planning matters shall take account of the National Park Plan.
6. CNPA's planning functions are set out in Section 7 of the Designation Order. The following powers are vested directly in CNPA:
 - a) 7(1)(a) - exclusive powers in relation to preparation of a local development plan for the National Park.
 - b) 7(1)(b) - shared powers with the relevant local authority for planning enforcement. One exception to this is in relation to certificates of lawful use or development (Sections 150 to 155 on 1997 Planning Act) where CNPA has no authority and the local authority has exclusive authority.
 - c) 7(1)(b) – shared powers with local authority in relation to the special controls in relation to Trees, Land Adversely Affecting Amenity of Neighbourhood, and Advertisements.
7. Strictly speaking CNPA doesn't actually become the planning authority for these purposes but this makes little practical difference as all references in legislation to 'planning authority' are to be read as references to CNPA.
8. The above functions are directly vested in CNPA by the Designation Order. Section 7(3) of the Designation Order also provides that other planning functions can come to be exercised by CNPA in certain circumstances. The most important of those other functions are determination of the following applications:
 - a) Under the 1997 Planning Act:
 - i. For planning permission;
 - ii. For an approval required by a development order (the most obvious example of this is in relation to prior approval under the General Permitted Development Order);
 - iii. For a consent, agreement or approval required by a condition imposed on a grant of planning permission
 - iv. For agreement (for discharge or modification of a planning obligation) under Section 75A of 1997 Act.
 - b) Applications under the 1997 Planning (Listed Building and Conservation Areas) Act.
 - c) Applications under the 1997 Planning (Hazardous Substances) Act.
9. CNPA's ability to determine these applications is generally referred to as its "call in" powers. CNPA's powers are almost identical to the "call in" powers which the Scottish Ministers have in relation to these applications. The "call in" powers can only be exercised where in CNPA's opinion an application in question raises a planning issue of general significance to the National Park aims.

10. Even where CNPA calls in an application it does not become the ‘planning authority’ for these purposes. This makes little practical difference as section 7(8) of the Designation Order provides that CNPA would have the same powers in relation to a called in application as a local authority would have had.
11. Section 7(8) of the Designation Order is the basis for CNPA being able to enter into planning obligations under Section 75 of the 1997 Planning Act in relation to called in applications.

Policy Context

12. Planning Policy in Scotland is set out in the National Planning Framework and Scottish Planning Policy (SPP).
13. The National Planning Framework sets out in Chapter 4 the role of National Parks and highlights that “Scotland’s two National Parks are exemplars of sustainable development and growth based environmental assets and natural resources” (National Planning Framework, para 4.27)

A Flexible Strategy for Diverse Places – Scotland’s National Parks

Scotland’s two National Parks – Cairngorms, and Loch Lomond and The Trossachs – are special places. National Park Partnership Plans provide the strategic framework for co-ordinated delivery of the four National Park aims, supporting their role as exemplars of a partnership approach to increasing sustainable economic growth and providing multiple benefits for residents, visitors and the wider Scottish economy.

Our National Parks are sustainable, successful places. We want to see positive planning and innovation continue to strengthen communities, encourage investment, support tourism, deliver affordable rural housing, and encourage high quality placemaking and visitor experiences. Both Parks can be low carbon places, with potential for increased use of microgeneration and to support the biomass supply chain. They are also connected places, with programmed improvements to key routes including the A82 and A9, the scenic routes initiative, the development of the National Walking and Cycling Network, and other path network improvements.

Above all, our National Parks are natural, resilient places. We expect their exceptional environmental quality, comprising some of the very best of Scotland’s nature and landscapes, to continue to form the foundations of their development plans.

Source: National Planning Framework

- 14 Scottish Planning Policy sets out that, the four aims must be pursued collectively; that if there is conflict then greater weight should be given to first aim; that planning decisions should reflect this weighting; that development plans are expected to be consistent with the National Park Plan (paras 84 to 86); that National Parks are areas where wind farms will not be acceptable (para 161); and that development that affects a National Park should only be permitted (paras 212 to 213) where:
 - a) The objectives of designation and the overall integrity of the area will not be compromised; or

- b) Any significant adverse effects on the qualities for which the area has been designated are clearly outweighed by social, environmental or economic benefits of national importance.
- 15 SPP also provides clarity on how local development plans in National Parks should take account of the Housing Need and Demand Assessments prepared by local authorities as housing authorities in meeting housing land requirements:

“In the National Parks, local development plans should draw on the evidence provided by the HNDAs of the constituent housing authorities. National Park authorities should aim to meet the housing land requirement in full in their area. However, they are not required to do so, and they should liaise closely with neighbouring planning authorities to ensure that any remaining part of the housing land requirement for the National Parks is met in immediately adjoining housing market areas, and that a 5-year supply of effective land is maintained.” (Source: SPP, Para 121)

Principles

- 16 This Protocol was developed based on a number of principles:
- a) Partnership and trust;
 - b) Working together, sharing responsibility for a consistent approach to planning in the National Park;
 - c) Efficiency and effectiveness, avoiding duplication of effort wherever possible, and sound decision-making;
 - d) Commitment to an open exchange of information; and
 - e) Willingness to keep processes under review and to strive for continuous improvements in performance.

Development Planning

17. **Plan Preparation:** The CNPA is responsible for the preparation and adoption of the Local Development Plan for the National Park and for any associated Supplementary Guidance. The Development Plan sets the context for all planning decisions taken in the Park. CNPA will convene a partnership group to oversee the process involving all local authorities and relevant statutory agencies. Local authorities will contribute information as requested to assist in Plan preparation. The CNPA will carefully consider representations made by partner local authorities to consultations on the LDP and associated planning guidance and will discuss these representations with the relevant local authorities as part of the plan preparation process.
18. **Current Development Plan status:** The Cairngorms National Park Local Development Plan 2015 was adopted in March 2015. A suite of Supplementary Guidance and Non-statutory Guidance was approved in September 2015. Supplementary Guidance produced by the local authorities is not part of the development plan for the National Park but may still be a material consideration.
19. **Plan Delivery:** The CNPA has prepared an Action Programme and will convene a Planning and Delivery Group, involving all local authorities to promote its delivery

and to monitor the Plan. The CNPA will convene a Developers Forum focussed on delivery of development in the National Park and will attend relevant Development Forums (comprising planning and housing officials) to promote delivery.

20. **Plan Monitoring:** CNPA will lead on monitoring of delivery of the Plan as part of the normal Plan review and preparation process. Local authorities will share information and provide information on request.

Development Management

21. **Definitions:** Although the term “planning application” is used throughout this Protocol, for the purposes of this document it includes applications for planning permission, approval required under planning conditions, applications for discharge or modification of planning obligations, listed building consent, conservation area consent, advertisement consent, hazardous substances consent and applications for prior approval in relation to permitted development. The CNPA does not have powers in relation to applications for certificates of lawfulness of existing/proposed use or development, and High Hedge applications and such applications will be submitted to, and determined by, the relevant local authority.
22. **General Planning Enquiries and Advice:** All general planning enquiries (e.g. about the need for planning permission or extent of permitted development rights) within or affecting the Park should be directed to the respective local authority. The CNPA will generally not handle such enquires to minimise the potential for confusion. CNPA will produce a series of [Planning Advice Notes](#) to help people use the system.
23. **Pre-application Advice:** Pre-application advice is an important part of the planning process that can improve the quality of outcomes and certainty for development proposals. Local authorities will handle all pre-application advice and request input from the CNPA for cases that are likely to be called in. Charges will be made as appropriate depending on each LA approach. The CNPA will generally avoid giving pre-application advice except through the system coordinated by each local authority. The CNPA Planning Committee agreed a procedure for Planning Committee member involvement in pre-application discussions on applications in December 2015. Local authorities may also involve elected members in the provision of pre-application advice on cases that are likely to be “called-in” and, where they do so, they will indicate clearly to the applicant that it is the CNPA, not the local authority, who are likely to determine the application.
24. **Validation/Registration:** Local authorities are responsible for validation and registration of a planning applications and initiation of consultations, advertising, neighbour notification and other relevant statutory procedures. Local authorities will notify CNPA within 5 days of receiving a valid planning application. Where an application which has been “called in” has been withdrawn on advice from CNPA with view to resubmission, CNPA will discuss any relevant matters with the local authority prior to advising the applicant to ensure that all relevant considerations are taken into account.

25. **Environmental Impact Assessment (EIA) Screening and Scoping:** All applications within the National Park that fall within the lists provided in Schedule 2 of the relevant Regulations must be screened for EIA. Local authorities will lead on processing of both formal and informal requests for the screening of proposals to determine whether or not they require the preparation of an Environmental Impact Assessment. Local authorities will consult CNPA on all EIA scoping requests, will take account of their views in providing scoping responses and will copy such responses to CNPA.
26. **“Call in” Arrangements:** CNPA will “call in” planning applications which raise a planning issue of general significance to the National Park within three weeks of receipt of notification from the local authority of a planning application. CNPA will publish on a website, and keep under review, a list of “call in” criteria in order to be as clear and prescriptive as possible. The CNPA Head of Planning will decide, normally on a weekly basis, which applications to “call in” based on a set of clear criteria that is reviewed annually. Local authorities shall transfer the application, with all relevant supporting material, to the CNPA within five days of the date of “call in”. CNPA will notify the applicant within five days and other interested parties as soon as practicable after receipt of the files. CNPA will generally not comment on applications that have not been “called in” unless advice is specifically sought. The criteria for applications that are likely or unlikely to be called in by the CNPA are kept up to date in this [Planning Advice Note](#).
27. **Specialist Advice:** The CNPA may request specialist advice from local authority consultees (eg transportation, environmental health, housing teams) on applications it has called-in. This will normally be to follow up consultations that the local authority has initiated in its role as planning authority prior to CNPA call-in, but could also be initiated by CNPA following call-in of an application if relevant to a particular local authority service. CNPA employs a series of specialist officers (including landscape, natural heritage, outdoor access and economic development) who may be consulted on planning related matters at the discretion of planning officers dealing with casework. Local authorities may consult the CNPA on any application within the Park and any applications outwith it which are considered to affect the special qualities of the Park. Specialist advice will be provided at the discretion of the relevant Head of Service. A protocol between CNPA and Scottish Natural Heritage is in place to ensure that there is no duplication of effort in providing natural heritage advice.
28. **Developer Obligations/Contributions:** The Cairngorms National Park Local Development Plan and Supplementary Guidance on Developer Contributions provide the policy basis for any developer obligations with the National Park. The way in which these policies apply will be different in different local authority areas depending on the available information about service provision, pressures and costs. The CNPA will consult the planning gain/developer obligations team of the relevant local authority on applications that may have impacts that could be mitigated by a developer obligation. The local authority planning gain/developer obligations team will inform the CNPA of the level of any obligations required and basis for calculations. In larger or more complex cases a degree of negotiation between the planning gain team, developer and CNPA may be required. If a local authority does not suggest an appropriate and transparent contribution, then the CNPA will assume

that none is justified. Contributions towards affordable housing are also specified by a LDP policy and through non-statutory planning guidance.

29. **Planning Fees:** Planning fees are paid to and administered by Local authorities. CNPA will invoice each LA for 60% of the planning fee for those applications “called in” in July and January. This simple system has been agreed to achieve equity, to reflect the likely work involved and to keep procedures clear and simple. In rare circumstances, and only for exceptionally complex cases, the CNPA may seek a larger proportion of a planning fee from a local authority to reflect the proportion of work done by the CNPA.
30. **Prior Notification/Approval:** The CNPA’s “call-in” powers extend to these provisions of the General Permitted Development Order where approval is required from the planning authority. The CNPA has a particular interest in the management of vehicle hill tracks that can have a significant adverse landscape effect on the National Park. The local authorities will notify the CNPA of all agricultural or forestry Private Roads and Ways prior notification applications in the National Park. The CNPA will respond to the local authorities if it considers the private road or way proposal would require prior approval and also whether it would call-in the prior approval notification. The local authorities will notify the CNPA of all agricultural or forestry Private Roads and Ways prior approval applications in the National Park and the CNPA will call-in and determine those that raise significant issues for the National Park.
31. **Consultation/Notification on Electricity Act Applications:** Local authorities will consult CNPA on all applications for energy generation and transmission projects under the Electricity Act within, and potentially affecting, the Park and notify CNPA of all similar Scottish Government consultations.
32. **Planning Decisions:** CNPA will notify local authorities on resolutions to grant or refuse permission made within one week of the relevant Committee meeting. Local authorities will notify the CNPA on decisions to grant or refuse permission, and on EIA scoping responses, within three weeks of the issuing notices.
33. **Appeals:** Local authorities will work within the context of their Schemes of Delegation with appeals on most local developments to be considered by their Local Review Bodies. National/major developments, and applications determined by planning committee, will be considered by Department for Planning and Environmental Appeals (DPEA). Appeals for applications determined by CNPA will all be considered by DPEA. It will be the responsibility of the authority which determined a planning application to handle any subsequent appeal.
34. **Applications to Modify or Discharge Planning Obligations:** CNPA has “call-in” powers in relation to applications for discharge or modification of a planning obligation under Section 75A of the 1997 Act which relate to developments within the National Park. As a general approach, CNPA:
 - a) Will not “call in” Section 75A applications where it was not party to the original planning obligation;
 - b) Will “call in” Section 75A applications where it was a party to the original planning obligation but the local authority was not; and

- c) May “call in” a Section 75A application, having regard to the matters addressed in the application, where both CNPA and the local authority were party to the original planning obligation.
35. All applications under Section 75A of the Planning Act, irrespective of whether the original planning obligation was signed by CNPA, the local authority or both, must be submitted to the relevant local authority in the first instance.

Monitoring & Enforcement

36. CNPA will monitor conditions discharge and adherence on applications it has called in and approved. Each local authority will monitor conditions on applications it approves.
37. CNPA and local authorities all have powers of enforcement (including advertisement control). Each organisation has a duty to prepare an Enforcement Charter that sets out the standard of service for responding to breaches of planning control. CNPA will lead on preparation of one Enforcement Charter for the National Park, summarising the role of all five local authorities and CNPA and providing appropriate contact points.
38. Enforcement cases can be brought to the attention of either CNPA or the relevant local authority. Either CNPA or the relevant local authority will notify the other of the potential breach of planning control and ascertain if it relates to a planning case on which a decision has been made. If it does, then the matter is passed on to the responsible authority to deal with. If not, then CNPA will lead on cases relating to applications that, had they been made, would have been “called in”. Local authorities will deal with all remaining cases.

Other Matters

39. **Tree Preservation Orders (TPOs):** The CNPA and local authorities all have powers in respect of TPOs. The local authorities will deal with all matters in relation to TPOs, maintain relevant records and make them available to the CNPA on request. Local authorities will consult CNPA when making new TPOs. CNPA may request the designation of new TPOs, normally as part of LDP delivery.
40. **Conservations Areas:** The 5 Local Authorities have the power to designate Conservation Areas and will work with the CNPA to assess the case for any new Conservation Areas as part of the LDP preparation process.
41. **Communications and stakeholder engagement:** The CNPA operates a Developers Forum for developers, landowners and agents in the National Park. It meets three times a year, normally with themed discussions and includes opportunities to network and discuss issues between planning authorities and development industry. The CNPA will invite local authorities to participate in meetings. The CNPA operates a Community Planning Representatives Network (PRN) for planning representatives on community councils or associations in the

National Park. The PRN meets twice year and is an opportunity to inform local communities and discuss planning issues that affect them. The CNPA will invite local authorities to participate in meetings.

42. A9 upgrade works: The A9 upgrade works between Perth and Inverness are a national project within the National Planning Framework. The works will be undertaken in different sections over more than 10 years. Both CNPA and Perth and Kinross Council or Highland Council are consultees for the sections that are within the National Park. CNPA will provide advice to Transport Scotland or their agents on issues of Landscape, Ecology (on non-designated sites), Outdoor Access and Community and Private Assets during stage 2 and stage 3 consultations of the Design Manual for Roads and Bridges (DMRB) process or if necessary, during the construction process.

Liaison and Review

43. The protocol, and the effectiveness of the arrangements it sets out, will be reviewed annually at a liaison meeting to be convened by CNPA for all Heads of Planning or their nominees.

Agreement and Contact Points

44. The protocol comes into effect on 31 March 2016 and replaces any earlier agreed versions. Agreement is recorded by exchange of emails with CNPA and the respective local authorities.

Planning Authority	Head of Planning	email
Cairngorms National Park Authority	Gavin Miles	gavinmiles@cairngorms.co.uk
Aberdeenshire Council	Robert Gray	robert.gray@aberdeenshire.gov.uk
Angus Council	Ian Mitchell	mitchell@angus.gov.uk
Highland Council	Malcolm MacLeod	malcolm.macleod@highland.gov.uk
Moray Council	Jim Grant	jim.grant@moray.gov.uk
Perth and Kinross Council	David Littlejohn	dlittlejohn@pkc.gov.uk