

CAIRNGORMS NATIONAL PARK AUTHORITY

MINUTES OF THE PLANNING COMMITTEE

held at The Albert Memorial Hall, Ballater
on 2 March 2012 at 10.30am

Members Present

Peter Argyle	Eleanor Mackintosh
Duncan Bryden	Ian Mackintosh
Jaci Douglas	Willie McKenna
Dave Fallows	Gordon Riddler
David Green	Gregor Rimell
Kate Howie	Brian Wood
Marcus Humphrey	Allan Wright
Gregor Hutcheon	

In Attendance:

Don McKee, Head Planner
Robert Grant, Development Management Officer
Mary Grier, Senior Development Management Officer
Andrew Tait, Senior Development Management Officer
Pip Mackie, Planning Systems Officer
Sandra Middleton, Economic Development Officer
Karen Major, Development Plan Officer

Apologies:

Angela Douglas
Katrina Farquhar
Mary McCafferty
Martin Price

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Agenda Items 1 & 2:

Welcome & Apologies

1. The Convenor welcomed all present and offered congratulations to Peter Argyle and his wife and Hamish & Heather Trench, on the recent births of their children.
2. Apologies were received from the above Members.

Agenda Item 3:

Minutes & Matters Arising from the Previous Meeting

3. The minutes of the previous meeting, 3 February 2012, held at The Community Hall, Boat of Garten were approved.
4. Don McKee provided Members with an update regarding the request for the removal of the Section 75 Legal Agreement (S75) at the Laggan Country Hotel, Laggan. He advised that the CNPA had accepted the application to discharge the S75 as the Planning Authority that had determined the original application and had entered into the S75 agreement. He advised that the Applicant had also entered an Appeal with the Department for Planning & Environmental Appeals (DPEA) in tandem with the application to the CNPA. However, this process had raised a possible issue with the Regulations that had been introduced.
5. Don McKee advised that a number of issues and complications had been raised since the previous Planning Committee with regard to the CNPA's Planning Powers, these were:
 - A considerable amount of cross referencing of legislation by the Scottish Government (SG), DPEA and CNPA.
 - An anomaly within the new legislation regarding applying to modify or discharge S75's and any consequent appeal, which meant that the CNPA could not accept or call-in such applications, even if the CNPA were a party to the original S75.
6. Don McKee advised that following the discovery of this anomaly the CNPA could not deal with applications of this type and it would fall to the Local Authority to determine them.
7. Don McKee advised that therefore the Applicant's Appeal to DPEA was not valid. The DPEA had written to the Applicant advising and explaining of this anomaly and stating that the Applicant should now submit a new application to Highland Council.
8. Don McKee advised that discussions had been held and all relevant documentation forwarded to Highland Council in anticipation of the new application. The Applicant would then be able to lodge an Appeal (if wished) with DPEA.
9. Don McKee clarified that the CNPA were unable to discharge or modify S75's, even if the CNPA and the Applicant were the only parties to the Agreement. Any amendments would have to be dealt with by the Local Authority (who were not party to the S75) which would defend its position in any subsequent appeal. He advised that it was an example of the unintended consequence of the CNPA Planning Powers and cross

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referencing within legislation. Don McKee stated that if any new planning legislation was brought forward and did not adequately cross reference the CNPA Designation Order the new planning powers would not apply to the CNPA.

10. Don McKee stated that the CNPA had requested that the SG address this issue, as although most S75's concern occupancy they are also used to ensure provision of Infrastructure, Developer Contributions, Affordable Housing etc. in larger applications. He advised that it was only proper that the Planning Authority that dealt with the S75 should be involved in any potential future modifications.
11. Don McKee advised that when the Committee considered that application in February 2012, the above situation was not known. He advised that the situation was also grossly unfair on the Applicant.
12. Duncan Bryden requested clarification that the situation had arisen from a change to a Statutory Instrument in February 2011. Don McKee responded that a S75 was essentially a contract between the Applicant and Planning Authority and that any contract must have a clause for review. Previously, Applicants could request the discharge / amendment of S75's but there was no right of appeal to any decision made by the Planning Authority. The amendment to the Statutory Instrument in 2011, introduced new powers under the Planning Act 2006, which allowed Applicants to formally submit an application to discharge / amend any S75 and therefore also have a right of appeal (which formerly Applicants did not have). Don McKee advised that the amendment to the Statutory Instrument did not adequately cross reference the CNPA Designation Order to allow the changes to apply to the CNPA.
13. Don McKee stated that any decisions taken on the discharge / amendment of S75's prior to February 2011 are still sound. However, any decisions / amendments on S75's taken after this date (even on S75's signed prior to the date) would fall into the category of having to be dealt with by the Local Authority.
14. The Committee were invited to ask the Head Planner points of clarification, the following were raised:
 - a) The possibility of any S75 discharge / amendment being dealt with under delegated planning powers. Don McKee responded that it would be a decision for the Local Authority to make. However, it would perhaps be more expedient for the Applicant if it were dealt with under delegated powers.
 - b) The possibility of any appeal being dealt with by a Local Review Body. Don McKee stated that he understood the appeal would still be submitted to DPEA, even if dealt with under delegated powers.
 - c) Clarification of how quickly the situation could be rectified. Don McKee responded that although the situation had been raised with SG and they were now aware of it, they had given no assurances that it would be dealt with quickly.
 - d) Who was responsible for cross checking legislation in order to prevent this situation arising in the future. Don McKee advised that it was the SG's responsibility, as they were the organisation bringing forth new legislation.

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- e) Clarification if the CNPA should have an internal cross referencing procedure for any new legislation. Don McKee responded that when new legislation was brought into effect the CNPA did its best to identify if it were applicable or not. However, this particular amendment required the cross checking of 3 different pieces of legislation. Don McKee stated that now this situation had been identified, the CNPA would be more vigilant in the cross checking of legislation.
- f) The need for more pressure to be placed on the SG to rectify the situation quickly. Duncan Bryden informed Members that Derek Mackay, Planning Minister and Jim McKinnon, Chief Planner had already been made aware of the situation.
- g) The CNPA being seen in a bad light and sustaining reputational damage, through no fault of the Authority.
- h) The need for a strong worded letter from the Convener requiring the situation to be addressed and rectified quickly.
- i) The need for the system to be more 'user friendly' and customer focussed for members of the public.
- j) The opportunity for the CNPA to state its case to become a full Planning Authority and the need for this to be supported by the 5 Local Authorities. The possibility of one of the Local Authorities taking the lead on this issue and obtain broad agreement from the other Authorities. Duncan Bryden advised that once the local elections were past, this could be explored further.

15. The Convener provided an update on the Action Points from the previous meeting:

- Action Point at Para. 18: Dealt with above under Para. 4.
- Action Point at Para. 33: The Applicant had met with Planning Officers to discuss acceptable revisions for a new application.
- Action Point at Para. 49: A Site Visit at Balmenach Distillery has been arranged for 2.15pm on Friday 16 March 2012.

Agenda Item 4:

Outcome of Electronic Call-In

16. The content of the Outcome of the Electronic Call-in held on 17 February 2012 was noted.

Agenda Item 5:

Declaration of Interest by Members on Items Appearing on the Agenda

17. There were no declarations of interest.

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Agenda Item 6:

Report on Called-In Planning Application for Erection of 18 Flats and 2 No Semi-Detached Houses (20 Units in Total)

**At The Garth, 21-23 Castle Road, Grantown-On-Spey
(Paper 1) (2011/0403/PPP)**

18. Members were advised that the Applicant had withdrawn the application and it would no longer be considered.

19. **Action Points arising:** None.

Agenda Item 7:

Report on Called-In Planning Application for Alterations and Extensions to Form 2 Semi-Detached Houses

**At Gladstone House, 17-19 Castle Road, Grantown-On-Spey
(Paper 2) (2011/0401/DET & 2011/0402/LBC)**

20. Members were advised that the Applicant had withdrawn the applications and they would no longer be considered.

21. **Action Points arising:** None.

Agenda Item 8:

Report on Called-In Planning Application for Construction of Additional Wastewater Treatment Infrastructure

**(Above and Underground) Associated with Upgrading Wastewater Treatment Works on Land North-East of Existing Works and South of Railway Line
(Revised proposal ref 09/191/FULBS (09/255/CP)**

**At Kingussie Wastewater Treatment Works, Manse Road, Kingussie
(Paper 3) (2011/0383/DET)**

22. Mary Grier presented a paper recommending that the Committee approve the application subject to the conditions stated in the report.

23. The Committee were invited to ask the Planning Officer points of clarification, the following were raised:

- a) HGV access issues across the Gynack Burn Bridge, whilst building works are undertaken simultaneously at both the School and the WWTW and ensuring that SW have dialogue with the School Management regarding this issue. Mary Grier advised that this could be included as an Advice Note and that the Traffic

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Management Plan was to be drawn up in conjunction with Highland Council Education Services.

- b) Odour issues arising when the sludge tanks are emptied and the potential for impacts on tourism in the area. Mary Grier replied that an Odour Management Plan had been submitted and an Advice Note was included which required regular liaison with HC Environmental Health on this issue. Mary Grier advised that since the previous granting of planning permission there had been an increased level of contact between the SW liaison staff and the Community Council and an increased awareness of a level of dissatisfaction in the area. Mary Grier also advised that the emptying of the tanks was stated to take approximately 10 minutes and this could be monitored on a regular basis by HC Environmental Health.
- c) The high level of complaints required by SW, particularly regarding odour, before they will address any issue. Mary Grier advised that if any issue arose regarding Odour it may be advisable to first contact HC Environmental Health who may have the ability to contact appropriate SW personnel.
- d) The existing structures on the site. Mary Grier advised that some of the structures would continue to be used. However, the portacabin (currently used as the control room) would be removed and replaced by a proposed new building.
- e) The possibility in the future of a Local Plan policy on Odour.
- f) If public access was to be allowed in the wild meadow area of the application. Mary Grier advised that fencing was only to be around the development infrastructure and the meadow would be available for public use.
- g) The visual improvement of the existing structures. Mary Grier advised an additional condition could be included to cover this issue.
- h) The possibility of education for school pupils regarding the works at the site. Mary Grier replied that this could be included as an Advice Note.
- i) The possibility of Condition 4 to include reference to the lopped trees already on the site. Mary Grier advised this could be included.
- j) The potential visual impact of 2 developments taking place simultaneously and the possibility of ensuring that the landscaping takes place at the same time. It was advised that there was a gap between the School and WWTW sites.

24. The Committee agreed to approve the application subject to the conditions stated in the report with the following amendments:

- Condition 4: To include reference to the existing lopped trees on the site.
- Additional Condition: Regarding the upgrading and visual improvement of the existing structures on the site.
- Additional Advice Notes: To liaise with the School regarding the access road and potential opportunity for education regarding the works at the site.

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25. **Action Points arising:** None.

Agenda Item 9:

Report on Called-In Planning Application for Installation of 2 Hydropower Schemes and Reconstruction of a Dam At Pitmain Lodge, Kingussie (Paper 4) (2011/0281/DET)

26. The Convener informed Members that a request to address the Committee had been received, within the given timescale, from:
- Agent – Adrian Laycock
27. The Committee agreed to the request.
28. Robert Grant presented a paper recommending that the Committee approve the application subject to confirmation that the Applicant had entered into an understanding with Kingussie Community Development Company on the community hydro scheme and the conditions stated in the report.
29. The Committee were invited to ask the Planning Officer points of clarification, the points raised were to be directed to the Agent.
30. Adrian Laycock was invited to address the Committee. The presentation covered the following points:
- Watching a 'fly through' of the proposal.
 - The difficult terrain encountered by the proposal.
 - The incorporation of the proposed structures into the natural environment.
 - The potential for future projects.
31. The Committee were invited to ask questions of the speaker and the following points were raised:
- a) Had consideration been given to cladding the proposed power house with stone / wood. Adrian Laycock responded that the materials had been selected to assimilate the building into the hillside. He advised that the earthworks could also be brought further forward to soften the structure.
 - b) The reason the roof had a stepped down appearance. Adrian Laycock advised this was to allow ventilation and natural daylight into the structure.
 - c) The potential for the inclusion of more natural stone in the proposed reconstruction of the Gynack dam. Adrian Laycock advised that more natural stone could be included in the downstream facing and intakes. He also advised that the dam had to be constructed to deal with a 1:10,000 flood risk.

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- d) The normal flow rate of the water and the amount to be taken up by extraction. Adrian Laycock advised that the Hansell flow rate would be Q90, which a flow which is exceeded 90% of the time, as stipulated by SEPA. He advised that when the flow rate was low, the turbines would switch off.
- e) If the existing power house was to be removed or retained. Adrian Laycock advised that it would be retained as it was. The building was not part of the scheme as it was derelict and not located in the correct area.
- f) The variation in the loch water level during flood events. Adrain Laycock responded that the water level would rise by 0.8m in a 1:10,000 flood event. In the summer the water level dropped by approximately 0.5m and that the proposed scheme would help to stabilise the water level.
- g) The intake weirs and the possibility of them filling up with river bed material. Adrian Laycock advised that they had been designed in such a way (known as a Crump weir) to allow the passing of large boulders / rocks and sediment through without damage to the structure and also to dissipate the energy of the water to avoid scouring.
- h) The ownership of the dam and if regular inspections were required. Adrian Laycock responded that the dam and loch were under the ownership of the Estate and that under the Reservoirs Act 1976, the owners are required under law to upkeep the dam and reservoir.
- i) If any interpretation was to be provided. Adrian Laycock advised that he was sure the Estate would be happy to provide interpretation on the proposed scheme. He advised that they had been involved in the community hydro scheme which already included interpretation.
- j) Thanks were given to the Estate for providing an opportunity for people to learn the benefits of the scheme for the local community.

32. Duncan Bryden thanked the speaker.

33. The Committee agreed to approve the application subject to the conditions stated in the report with amendments to:

- Condition 16: Interpretation to be continued beyond the construction phase.
- Improvements to the landscaping around the proposed power house.
- The dam facings (where appropriate) to include natural stone in order to further blend into the landscape.
- Amendment to Part A of the recommendation to read: A Voluntary Undertaking with the Kingussie Community Development Company to contribute engineering and project management expertise and any other reasonable contributions to the community micro-hydro scheme on the lower reaches of the Gynack Burn.

34. **Action Points arising:** None.

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Agenda Item 10:

**Report on Called-In Planning Application for Creation of All-Abilities Footpaths, Pond and Associated Works to Woodland Area
At Nethy Bridge Village Hall, Nethy Bridge
(Paper 5) (2011/0416/DET)**

35. Robert Grant presented a paper recommending that the Committee approve the application subject to the conditions stated in the report.
36. The Committee were invited to ask the Planning Officer points of clarification. No points were raised.
37. The Committee discussed the application and the following points were raised:
 - a) The possibility of including fruit trees in the requirement for native species planting. Robert Grant confirmed this could be included in Advice Note C.
38. The Committee agreed to approve the application subject for the conditions stated in the report with the following Amendment:
 - Advice Note C: To include reference to fruit trees,
39. **Action Points arising:** None.

Agenda Item 11:

**Report on Called-In Planning Application for Re-Building, Alteration & Extension of the Ruined Kilbo Bothy to Form Hill Shelter Including Drainage
At Former Kilbo Bothy, Glen Prosen
(Paper 6) (2011/0410/DET)**

40. Robert Grant presented a paper recommending that the Committee approve the application subject to the conditions stated in the report.
41. The Committee were invited to ask the Planning Officer points of clarification, the following were raised:
 - a) Concern about the roof pitch on the extension regarding snow load. Robert Grant stated that the roof was to be constructed of lead and there was enough of a pitch to allow rain run-off, which should also address snow load.
 - b) The materials to be used on the facings of the building. Robert Grant confirmed the building was to be constructed using the salvaged stone from the original building.
 - c) Clarification that the septic tank would be located underground. Robert Grant confirmed this was the case,
 - d) If the bothy was to be left open for public use or locked for private use only. Robert Grant confirmed that it was to be locked and principally for private use.
 - e) The proposal being a good reuse of existing buildings.

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- f) The type of slates to be used on the roof, a preference for stone slates, and the proposed use of untreated larch. Robert Grant advised that the Applicant had stated their commitment to high quality finishings and could include reference to the use of stone slates in the conditions.
 - g) Confirmation the shutters were proposed due to security issues. Robert Grant confirmed this was the case.
 - h) The possibility of encouraging the Estate to allow community user groups to access the bothy. Don McKee advised that this issue could be passed onto CNPA Land Management Staff to liaise with the Estate. Robert Grant stated that this could be included as an Advice Note.
 - i) The possibility of a combination lock being used instead of a padlock to allow easier access for user groups.
 - j) The access to the bothy. Robert Grant advised that access was either by a ford, crossing an iron beam or wading across the burn. However, he believed there may be a forthcoming application for a footbridge to address this issue.
42. The Committee agreed to approve the application subject for the conditions stated in the report with an additional Advice Note regarding the use of the restored Kilbo Bothy for community groups and other events, to afford wider public enjoyment of the building.

43. **Action Points arising:** None.

Agenda Item 9:

Report for Decision:

On CNPA Development Plan Scheme 2012

(Paper 7)

44. Robert Grant & Karen Major presented a report and recommended that the Committee agree the altered timetable.
45. Karen Major advised that the previous timetable recommended that the Local Development Plan (LDP) would be considered in July with a view to carrying out consultations in October 2012. In order to allow Members time to understand and discuss the full implications, it was now recommended that the Board decision be set back until November, to allow time for informal discussion on the contents between now and October 2012. This would be followed by the consultation process starting in March 2013.
46. Karen Major stated that it was also hoped that the Court of Session would have made a decision on the challenge to the current CNP Local Plan within this timeframe to allow their findings to be taken into account.
47. The Committee noted the changes and agreed the proposed new timescale.

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48. **Action Points arising:** None.

Agenda Item 10:

Report for Decision:

On Master Planning Update – Tomintoul, Glenlivet and Braemar (Paper 8)

49. Sandra Middleton & Karen Major presented an update report on the Master Plan exercises for Tomintoul, Glenlivet and Braemar.

50. Karen Major advised that the process would feed into the community statements and visions within the CNP LDP.

51. The Committee were invited to ask the Officer points of clarification, the following were raised:

- a) Clarification was sought on the term Master Plan in planning terms. Sandra Middleton advised that the description of Master Plan within the Scottish Government's Planning Advice Note was quite vague. However, it could be a detailed document, specific to a particular development or be used to describe planning on a regional scale. She advised that the Master Plan for Glenlivet & Tomintoul had been developed as a long term view of how the people would wish to see the landscape and built community develop over the next 50 years. The Braemar Master Plan looked at the development of the village with some wider area improvements. Sandra Middleton advised that the use of the term Master Plan and what could be expected from the process required careful clarification.
- b) No mention of Heritage Lottery Fund potential for Tomintoul. Lottery funding requiring a driving need process and if this could be captured through the Master Plan exercise. Duncan Bryden advised that this was partially being addressed by the regeneration work and the initial study looking at the fabric and community DNA of the area.
- c) The engagement and feeding in of community views to the LDP process. However, this process can be overturned by the Reporters when assessing the LDP. This point needs to be addressed due to being unfair and fundamentally undemocratic. Encouraging Members to raise this issue with the Scottish Government at every opportunity.
- d) Confusion in the Braemar community between the distinction of the Master Plan exercise and the Community Action Plan currently being developed. The need to bring both plans together to give wider understanding for the community.
- e) Strength in having a wider integrated plan bringing together all individual community initiatives, to allow grant funding to completely understand the drive and cohesion behind community initiatives. Duncan Bryden confirmed that this would be taken on board.

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52. The Committee accepted the update report for information purposes.

53. **Action Points arising:** None.

Agenda Item 11:

Any Other Business

54. Duncan Bryden advised Members of the recent announcement by Historic Scotland to make funding available for Conservation Areas. Loch Lomond & the Trossachs were considering proposing Killin for this funding. However, Don McKee had confirmed that due to CNPA not being a full Planning Authority, the CNPA had no direct responsibility for the designation of Conservation Areas.

55. Don McKee advised that currently the CNPA had to work in tandem with the Local Authorities to promote or develop Conservation Areas. He stated that there were 4 Conservation Areas within the CNP – Inverey, Braemar, Ballater & Grantown on Spey.

56. **Action Points arising:** None.

Agenda Item 12:

Date of Next Meeting

57. Friday 30 March 2012 at The Community Hall, Boat of Garten.

58. Duncan Bryden informed Members that this would be Robert Grant's last Planning Committee due to leaving the CNPA on a career break to venture to Canada. Duncan Bryden offered thanks on behalf of Members for all his work over the previous years and wished him well for the future.

59. Committee Members are requested to ensure that any Apologies for this meeting are submitted to the Planning Office in Ballater.

60. The public business of the meeting concluded at 12.30pm.