

CAIRNGORMS NATIONAL PARK AUTHORITY

FOR DECISION

Title: Scottish Executive Rural Group Consultation –
Enhancing Our Care Of Scotland’s Landscapes

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Purpose:

This paper seeks the Board’s endorsement for the Park Authority’s response to the above consultation from the Scottish Executive Rural Group.

Recommendations:

The Board is recommended to endorse and approve the CNPA response to the consultation paper as indicated below. The finalised response, including any amendments agreed by the Board will then be sent formally to the Scottish Executive.

Summary:

The consultation paper contains proposals for legislation to give Scottish Ministers powers to designate, de-designate, or revise the boundaries of any National Scenic Area (NSA). A statutory definition of purpose including criteria for designation of NSAs is proposed, together with a stated aim. Proposals for promoting a non-statutory approach towards the management of NSAs are also presented. Of especial relevance to the CNPA is the discussion over the relationship between NSAs and National Parks and the role of management strategies for NSAs within the context of National Parks.

Background:

1. History of National Scenic Areas
The NSA designation had its origins in the proposals included in the Parks System for Scotland policy paper published by the former Countryside Commission for Scotland (CCS) in 1974. After Government's acceptance of that paper, CCS set in hand a programme of work to identify those areas which might be candidates for the new landscape designation. The outcome of that work was the identification of 40 areas, which were described in Scotland's Scenic Heritage, published in 1978
2. Following a period of discussion about how the new system would be implemented, and what measures were needed to secure their protection and enhancement, SDD Circular 20/1980, *Development control in NSAs*, introduced the new "national scenic area". The 1980 Circular required:
 - local authorities to have policies in their development plans to protect NSAs;
 - restricted some permitted development rights in NSAs, and
 - required consultation with CCS (now SNH) on certain defined developments.
3. In addition, 2 directions were made under powers in the Town and Country Planning (General Development) (Scotland) Order 1975 which set out procedures for reference to the Secretary of State of planning applications for specified categories of development, and removed certain permitted development rights in NSAs. In 1999, National Planning Policy Guideline (NPPG) 14 *Natural Heritage* further strengthened the protection given to the NSAs within the planning system.
4. Despite these mechanisms, concerns continued to be raised that the NSA designation was not sufficiently effective in safeguarding Scotland's best landscapes and securing their positive management. There was also some criticism of the original selection of 40 areas on the grounds that it placed undue emphasis on the more remote mountain areas of the north and the west. In response, SNH was asked by the Scottish Office in 1997 to review the designation. In particular SNH was asked to consider the form of protection which a revitalised landscape designation should afford; to review the current selection of NSAs and advise on what changes might be necessary. SNH were also asked to consider the relationship of the NSA with other designations, in particular National Parks and Areas of Great Landscape Value.
5. SNH presented recommendations to Government in 1999 following a period of consultation. This included recommendations for enhancing the effectiveness of NSAs and for extending the suite of designated areas to better reflect the range of Scotland's landscapes. However, SNH

- considered that priority for action should be on the better care and management of the existing NSAs, and recommended that this could be best achieved through the development and implementation of management strategies. SNH also recommended that within any National Park NSAs should be de-designated to reduce the potential confusion and complexity of overlapping designations.
6. Following on from SNH's recommendations, The Scottish Executive Rural Group has issued the current consultation paper, "*Enhancing Our Care of Scotland's Landscapes*", which contains proposals for new legislation in relation to National Scenic Areas (NSAs). The consultation paper proposes to introduce a statutory definition of purpose, and process for designation of NSAs. It also contains proposals for preparing and implementing management strategies for individual NSAs, and seeks opinions on the need for NSAs within National Parks.

The Consultation and CNPA Response:

5.1 Legislative provisions for National Scenic Areas

7. The CCS report "Scotland's Scenic Heritage" included no formal definition of criteria for NSA designation. In order to identify NSAs, the CCS undertook a systematic survey, based on existing knowledge and combined this with a consensus forming debate within the Commission. The selection of the 40 areas was based on aesthetics and preference rather than an analytical review of the components of landscape. The NSA was also viewed as an accolade designation which identified what was judged at the time of the original survey to be the very best of our scenery. It was not intended to be representative of all of Scotland's landscapes.
8. The SE propose that the NSA designation should continue to be a scenic designation based on preferences for natural beauty and amenity, but recognising that this may also encompass other values. It should also remain an accolade designation rather than attempting to be representative of all landscapes in Scotland. This is in line with advice from SNH and reflects responses to its consultation paper on this matter

CNPA Response

9. *We agree that, outwith National Parks, NSAs should continue to be an accolade and scenic designation based on preferences for natural beauty and amenity. While it may be desirable to develop a hierarchy or representative system of landscape sites across Scotland (the landscape equivalent to Sites of Special Scientific Interest for nature conservation interests), this would require a new legislative approach which goes well beyond the scope of the current consultation. There is, however, a need*

in future to consider how to approach landscape conservation across Scotland, especially for areas of lesser national importance, but of high regional or local value to the local communities. This will probably be required in order for Scotland to implement and comply with the EC Landscape Directive. We are disappointed that this consultation has not started this debate despite the consultation's title.

5.2 A New Statutory Purpose for NSAs

10. The Scottish Executive state that NSAs represent the very best of Scotland's scenery and are "natural heritage designations of the highest national standing, identifying the national interest in the scenic qualities of an area." They also recognise that our most scenic landscapes form a critical part of our national heritage, encompassing a range of natural and cultural values (special qualities), that merit special effort to ensure current and future generations can appreciate these qualities in the future. Several NSAs cover extensive areas, and most include communities living and working within them. A modern approach to protecting valued landscapes recognises the mutual inter-dependence of communities and the landscape resource, and the contribution each makes to the other's long-term well-being.
11. Whilst accepting that the primary purpose of designating an area as an NSA relates to the protection of its scenic or national heritage value, a significant number of responses to the SNH consultation supported the proposal that socio-economic needs should be recognised in any statement of purpose for NSAs. SE are therefore proposing a definition of purpose for NSAs to be contained in legislation which provides a clear statement of the interest identified by NSAs, the importance that is attached to this, and the manner in which the designation should be applied. The proposed definition of purpose is:

that National Scenic Areas are areas of land which represent the very best of the landscapes for which Scotland is renowned, and

they are of such outstanding scenic beauty and amenity that they should be safeguarded and enhanced as part of the national heritage.

12. The proposed aims of designation are:

to manage changes arising from development and other pressures on the special qualities of the NSA consistent with the underlying purpose, whilst recognising the social and economic needs of communities.

Consultees are invited to submit their views on the clarity and appropriateness of the proposed purpose and aims of NSA designation.

CNPA Response

13. *The purpose of NSAs as an accolade designation is supported. There should be recognition that “natural heritage” invariably has a cultural dimension as there is very little in terms of landscape that has not had some degree of human intervention, even in many of the remoter mountain areas. This is an opportunity to accord historic aspects of landscapes the attention that they deserve by taking an integrated approach to designation. We are extremely concerned that the contribution of National Parks towards the conservation of Scotland’s very best landscapes remains unclear. Without clarification there will be pressure to take a more lenient line towards landscape conservation in the parts of the Parks outwith NSAs, as they will be regarded as being of lesser value. We have already seen pressure for this approach to be taken and we are concerned it is fundamentally misguided and will undermine the duty placed on Park Authorities, in line with the four National Park Aims, to conserve and enhance the outstanding national importance of the natural heritage of the National Parks and their distinctive character and coherent identity. This is addressed further below.*
14. *The CNPA supports the inclusion of socio-economic considerations within the aim as this is in line with the Aims for National Parks. We are concerned, however, that the proposed aim is phrased without clear instruction. It appears to be an aspiration rather than any form of duty or obligation. Accordingly it has an inherent weakness which could undermine the conservation of the NSAs it is meant to protect. This weakness is also confusing when placed alongside the four statutory Aims for the National Park. The four National Park aims are very clear and provide the statutory basis for the development of policies within the Park Plan to which all public bodies will have to have regard. The relationship between NSAs and National Parks is dealt with in more detail below, but it is clear that the logical and common sense approach is to untangle the two designations as suggested by SNH.*

5.3 Designation of NSAs

15. It is proposed that SNH and local authorities should have the power to consider and bring forward proposals for new NSAs, and also for the revocation or variation of such designation. A new power to designate, de-designate, or revise the boundaries of any NSA is therefore proposed as an improvement on the (now repealed) provisions formerly included in the Town and Country Planning (Scotland) Act 1972 and the Natural Heritage

(Scotland) Act 1991. It is proposed that the power to designate NSAs should lie with the Scottish Ministers, should include a requirement to consult with SNH and other relevant bodies, including the relevant local authorities, and that the area proposed for designation should fulfil the criteria set out in the definition of purpose for NSAs. There should be evidence that appropriate measures are required to protect those special characteristics.

5.4 Protection afforded to NSAs

16. The direct effect of designation would be similar to provisions in the repealed section 262(c) (4) i.e. that planning authorities would be required to have regard to the designation in its consideration of planning applications within the designated area. A review of the General Permitted Development Order is underway, which will include consideration of the effectiveness of the protection for designated areas, including NSAs, and will make recommendations on improvements for consideration by Ministers.
17. The existing protection measures afforded to NSAs are derived entirely through planning control. However, many of the land use changes which can affect scenic beauty and essential landscape characteristics, such as agricultural practices or forestry, do not require planning permission. Accordingly they are not directly controlled through the NSA designation. Despite this lack of control, it is not the intention of these proposals to impose any other function of a more general kind upon public bodies or others in relation to NSAs. There would, for example, be no new obligation on local authorities to take special steps to enhance or prevent deterioration of the character of such an area beyond those described above. Nor is it proposed that there should be any new or additional obligation beyond the operation of the planning system for public bodies or others to take special steps whilst undertaking their activities and functions in such areas. The general duty on government and public bodies to have regard to the desirability of conserving the natural beauty and amenity of the countryside will of course still apply. There is also scope for Land Management Contracts and the Scottish Forestry Grant Scheme to recognise and support the interests of NSAs.

Consultees views are invited on:

The appropriateness of the proposed powers of designation.

Are the roles in the designation and review process identified for SNH and local authorities appropriate?

CNPA Response

18. *The consultation does not indicate any role for National Park Authorities in relation to bringing forward proposals for new NSAs, or amendments to existing NSAs. If proposals were being considered that could impinge upon National Parks it is essential that the National Park Authorities have a statutory role and are party to these from the outset. If at the end of this consultation it is decided that NSA designations should still apply within National Parks, National Park Authorities should be accorded the power to consider and bring forward proposals for new NSAs and to amend or revoke existing ones, alongside SNH and the Local Authorities. If, as is hoped, NSAs are not to be retained in National Parks, this power would be irrelevant to Park Authorities.*
19. *We are concerned that there is to be no clear duty placed upon public bodies, with the exception of planning authorities, with respect to the conservation and enhancement of NSAs. We consider this to be a definite weakness in the approach to safeguarding Scotland's best landscapes. We recommend that the proposed aim, stated in the consultation, should become much more binding upon all public bodies, and that a clear duty to meet the aim is enshrined in the new legislation. We agree that land use changes have the potential to have a significant impact upon the landscapes and scenic qualities of NSAs, Accordingly we consider that it is essential that all public bodies should have a duty to have regard to the purpose of the NSAs in the undertaking of their functions, so as to ensure that they are conserved and enhanced in practice. This would apply to all public bodies with an incentive and/or regulatory function towards land management, as well as to planning authorities.*

5.5 NSAs and National Parks

20. NSAs and National Parks are both national designations and both can encompass relatively extensive areas. They differ however in terms of the range of national interests they identify - NSAs are focused entirely on landscape and scenic value, in contrast to the Park's wider breadth of natural or natural and cultural heritage interest and their accompanying social and economic remit as encompassed in their four Aims.
21. NSAs were established prior to the designation of Scotland's two National Parks. Both existing Parks include NSAs within their boundaries. Within the Cairngorms National Park these are the "The Cairngorm Mountains" and "Deeside and Lochnagar NSAs". These cover about 28% of the Park, with part of the Deeside and Lochnagar NSA extending beyond the boundary into Perth and Kinross. The national park authorities are required to take account of the NSAs within their boundaries in the way in which they manage the natural heritage assets of the Park and also

through their Parks Plans. However some views have been expressed to the effect that the overlapping of NSA/National Park designation is unnecessary and potentially confusing. There has been some pressure to remove NSA designation where this falls within the National Park boundaries.

22. The SE propose that the continuation or otherwise of overlapping designations should be considered on an individual basis for each NSA as the boundaries are reviewed. They consider that the outstanding quality of the scenery within these NSA areas is an important component of the special qualities of the National Parks and does not compromise the development of a park-wide approach to landscape protection and management through the Park Plan. However a significant consideration is that within NSAs there are some greater restrictions on certain categories of generally permitted development. In the absence of any other action, the rescinding of NSA designations within national parks could lead to a reduction in the protection which these areas have under planning legislation. The proposal to consider each such overlapping designation on its merits allows for the Review of the General Permitted Development Order (GPDO) to inform the debate.

**Consultees are invited to comment on:
The proposal to review the need for NSA designation within National Park boundaries on an individual basis;
Whether there is a case for retaining NSAs within National Parks**

CNPA Response

23. *We agree that NSAs are an important component of the special qualities of the National Parks, however, there is confusion as to the level of recognition and protection that should be accorded to the landscapes of National Parks outwith the NSAs. It is important to consider the basis for designation of National Parks.*
24. *In relation to statute, the Cairngorms National Park has been designated because it meets the conditions set out in the National Parks (Scotland) Act 2000. Of especial relevance are the first two conditions set out in 2(2):*
- a) that the area is of outstanding national importance because of its natural heritage or the combination of its natural and cultural heritage;*
 - b) that the area has a distinctive character and a coherent identity.*
25. *It is clearly acknowledged within NPPG 14 that the outstanding national importance of the National Parks includes their scenic and landscape value. Landscape considerations were at the fore when determining the possible boundaries of the Parks in relation to encompassing distinctive*

- character and coherent identity. Thus, while we acknowledge that the NSAs have an especial national significance for their scenic qualities, it is our opinion that the scenic and landscape value of each Park as a whole is also of national importance. This premise is derived from the fact that the core of each Park contains NSAs of national scenic importance, and that these NSAs are now set within the context of a boundary that must exhibit distinctive character and coherent identity. Accordingly, we most strongly recommend that the National Parks should be accepted as representing another part of Scotland's very best landscapes. In this way they would form an additional and complementary part of Scotland's designations for nationally important landscapes and scenic value.*
26. *If National Parks are recognised as a contribution towards the designation of Scotland's very best landscapes, and it would be strange if they are not, a separate NSA within a National Park would become unnecessary. To retain NSAs would undermine the integrity of the National Park as a whole as it would reinforce the perception in some quarters that parts of the Park considered by some to be of lesser landscape quality can be cherry picked as locations for otherwise unsatisfactory developments. Over a period of time such an approach would completely undermine the integrity of the Park and destroy the very characteristics and rationale that led to the designation in the first instance. If NSAs are rescinded within Parks, we would wish the protection measures afforded to NSAs within the planning legislation (as may be amended) to be applied throughout the National Parks. Indeed we would ask that this consultation provides the context and impetus for a review of the planning controls covering the entire range of development within the National Park to assess whether they should be extended to afford additional protection.*
27. *Within the Cairngorms, part of the Deeside and Lochnagar NSA extends beyond the Park boundary. If NSAs are rescinded within the Park this raises the question of what to do with the remainder outwith the Park boundary. This is an issue that would have to be resolved through dialogue with all relevant parties.*

5.6 Management Strategies

28. Ministers consider that NSAs are of such outstanding natural beauty and amenity that they should be managed and safeguarded as part of Scotland's national heritage. Within them, the aim is to manage change arising from development and land management decisions in ways that are consistent with this goal. The recent piloting of management strategies for NSAs in Dumfries and Galloway and Highland has shown that the preparation and implementation of these strategies can be a vital means of achieving this aim.

29. The consultation paper proposes that all local authorities and national park authorities where appropriate should be encouraged to prepare a management strategy for each NSA. This would not be a statutory requirement. Such a strategy should describe the special qualities of the NSA, identify key issues and opportunities, set out a vision for its future management, together with the objectives and a programme of actions to deliver it. It is intended that SNH will prepare further guidance on development of these management strategies. It is also proposed to make additional resources available, through SNH, for their preparation and implementation.

CNPA Response

30. *In general, the preparation and implementation of NSA management strategies is a positive contribution towards the safeguarding and sensitive management of Scotland's finest landscapes. If however, the local authorities are to expend time and other resources on their production, there must be an expectation that they will be regarded and implemented by all relevant public bodies. This re-emphasises our earlier comments that we believe that a duty to have regard to the purpose and aims of NSAs should be placed upon all relevant public bodies. Otherwise the production of management strategies can become little more than an academic exercise.*
31. *Within National Parks, however, we do not believe that a requirement to produce a bespoke management strategy for a NSA would bring any additional benefits. National Park Authorities have a statutory requirement to prepare a National Park Plan, which is essentially a management strategy setting out how the four statutory aims of National Parks will be achieved across the whole Park area, including those areas designated as NSAs. For the Cairngorms, this will set out our vision for the Park and the means by which the four aims will be delivered collectively and in a co-ordinated manner. The landscape policies in the Park Plan, and subsequent action plans will seek to manage change from land management and development. They will seek to conserve and enhance the special landscape and scenic qualities throughout its area that contribute to the Park's outstanding national importance for natural and cultural heritage. These Park Plan policies will be supported by specific landscape policies in the Local Plan that will be adopted by both the National Park and Local Authorities. The Local Plan policies and associated Supplementary Planning Guidance would set out the circumstances in which developments subjected to the enhanced level of planning control could take place and contribute towards maintenance and enhancement of landscapes that are part of Scotland's "national treasure" (Para. 94 National Planning Framework) A detailed landscape management strategy will also be produced to guide the practical*

implementation of both sets of policies, in co-ordination with the other aims. The Park Authorities are therefore already committed to thorough plan production which will go beyond the proposals within the consultation document. Furthermore, once adopted, there is a statutory duty upon all public bodies to have regard to the Park Plan in the discharge of their functions.

Conclusions

32. In conclusion:

- The CNPA support the proposed purpose of National Scenic Areas as an accolade designation for the very best of Scotland's landscapes and scenery.
- The CNPA considers that the proposed aim for the NSAs should become more binding upon all public bodies in the discharge of their functions.
- We most strongly recommend that National Parks should be recognised as providing an additional and complementary approach to the identification and designation of the very best of Scotland's landscapes, so that separate NSAs would no longer be necessary or appropriate within National Parks.
- If NSAs were to be retained in National Parks, National Park Authorities should have a share in the proposed powers for SNH and Local Authorities in the presentation of proposals for new or amended sites.
- If NSAs are rescinded within Parks, we would wish the protection measures afforded to NSAs within the planning legislation (as may be amended) to be applied throughout the National Parks. Indeed we would ask that this consultation provides the context and impetus for a review of the planning controls covering the entire range of development within the National Park to assess whether they should be extended to afford additional protection.
- We consider that the Park Plan and Park Local Plan, together with the statutory duties placed upon all relevant public bodies with respect to them once adopted, means that bespoke management strategies for NSAs in National Parks are unnecessary and potentially confusing.

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