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## CAIRNGORMS NATIONAL PARK AUTHORITY

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**Title: REPORT ON CALLED-IN PLANNING APPLICATION**

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DEVELOPMENT MANAGEMENT)**

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**DEVELOPMENT PROPOSED:** Restoration of bog woodland habitat by construction of dams. Land 575M SE of Mullingaroch House, Street Of Kincardine, Boat of Garten.

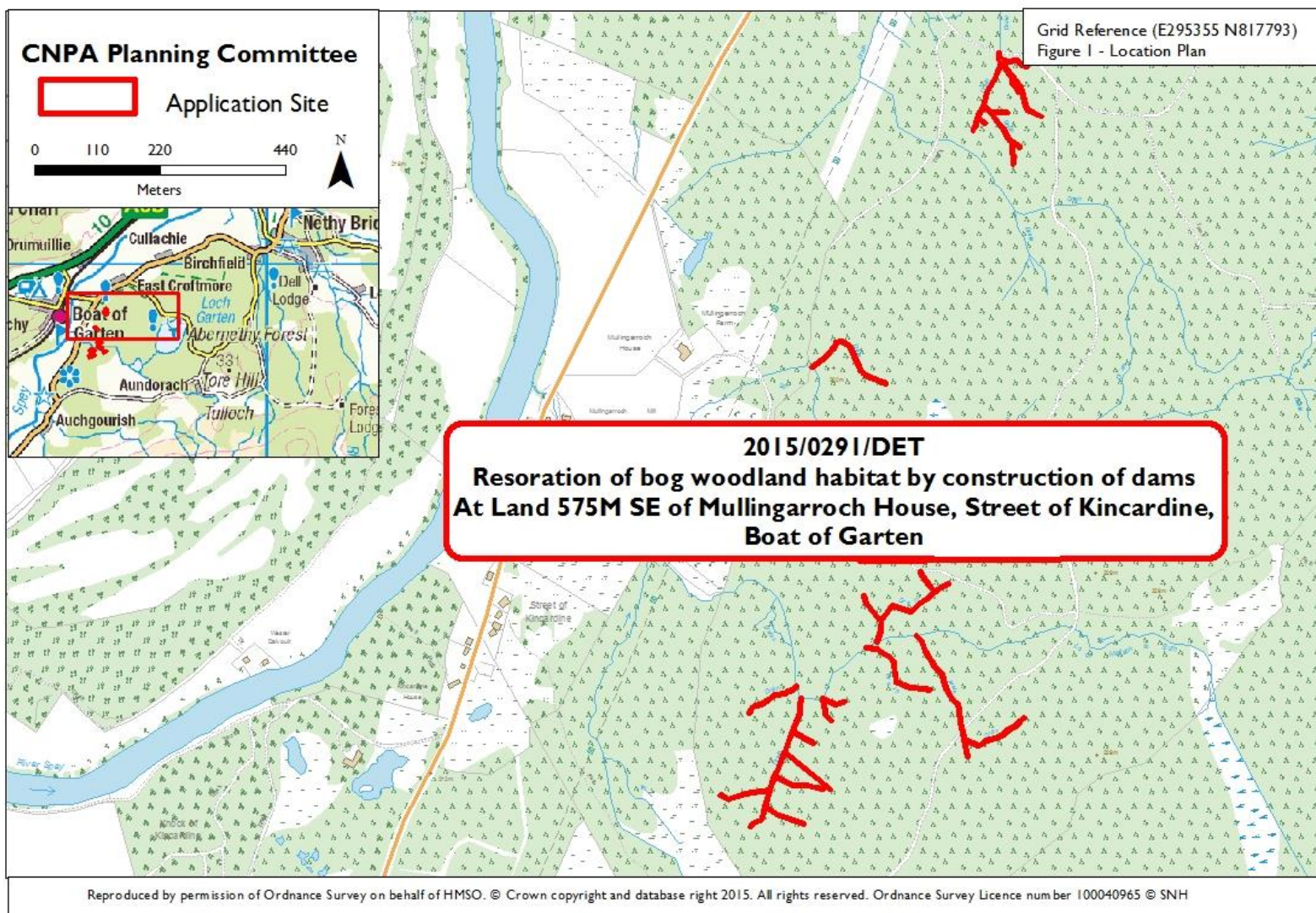
**REFERENCE:** 2015/0291/DET

**APPLICANT:** RSPB

**DATE CALLED-IN:** 7 September 2015

**REASON FOR CALL IN:** The proposal has potential to make a significant positive contribution to conservation of the National Park's natural heritage through restoration of habitats and to the sustainable use of natural resources through wetland management and peatland conservation.

**RECOMMENDATION:** APPROVAL SUBJECT TO CONDITIONS



## SITE DESCRIPTION AND PROPOSAL

1. The drawings and documents associated with this application are listed below and are available on the Cairngorms National Park Authority website unless noted otherwise:

<http://www.eplanningcnpa.co.uk/online-applications/#searchApplications>

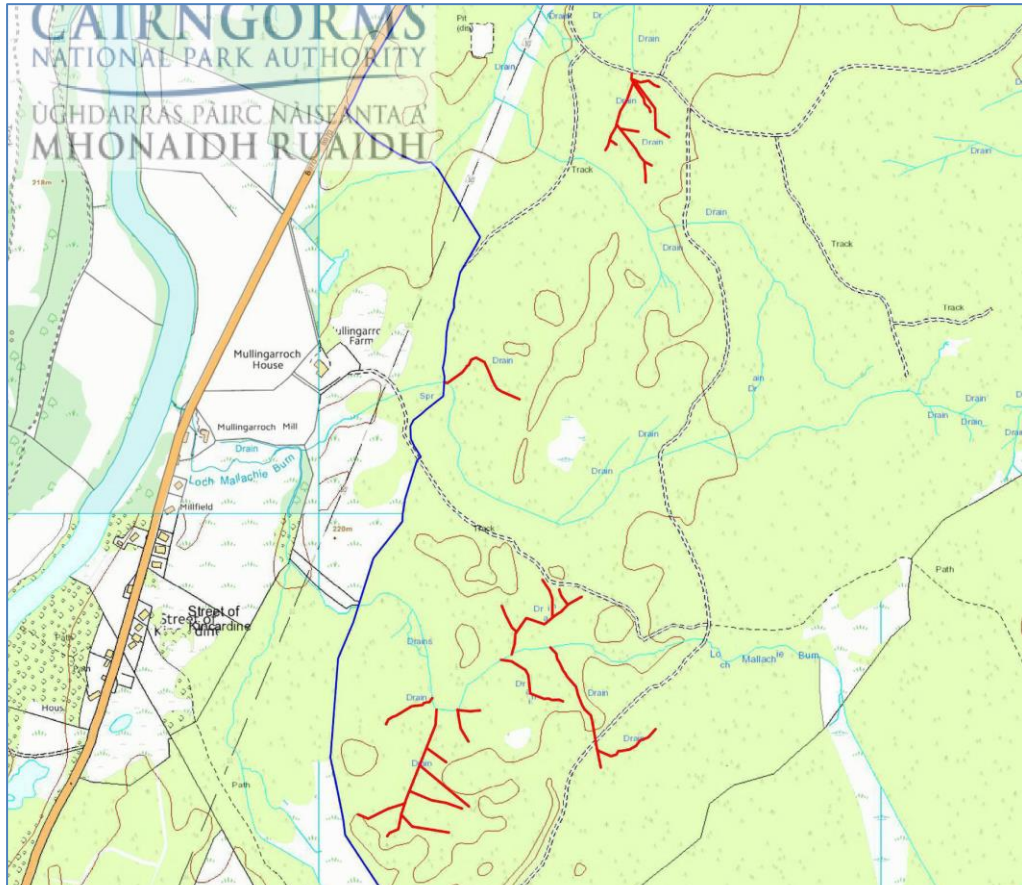
Title	Drawing Number	Date on Plan	Date Received
Supporting Statement			08 Sep 2015
Location Plan			08 Sep 2015
Plan of Drains	Map one	26 Aug 2015	08 Sep 2015
Plan of Drains	Map two	26 Aug 2015	08 Sep 2015
Plan of Drains	Map three	26 Aug 2015	08 Sep 2015
Plan of Drains	Map four	26 Aug 2015	08 Sep 2015
Plan of Drains	Map five	26 Aug 2015	08 Sep 2015
Dams Photos			08 Sep 2015

### Development Proposal

2. The applicant wishes to install a number of small dams at various locations within the land drain network of part of the Abernethy National Nature Reserve. The locations of the land drains subject to this application are shown on **Fig. 2**.
3. The works form the first phase of wider mire restoration to be undertaken by the RSPB and which would be subject to any future applications.
4. The submitted supporting statement notes that each 'dam' will be no more than one metre in height, and no higher than ground level. The applicant offers three options for construction, with each dam being constructed 7-10m along the drain network. The options available include the use of mini digger to dam with peat from the edge of the drains; hand construction using turves and timber cut by hand from nearby trees; and the further option being the installation of timber planks with a 'V' notch to allow excess water to drain over the dam. At the time of the site inspection the applicant indicated a preference for the 'hand construction' method.



5. There are a number of existing dams within the Abernethy forest area that have been installed since the early 1980s to re-naturalise plantation woodland within the NNR. The applicant has supplied photographs of a number of these to demonstrate the extent of the works and show the localised water pooling with the wider area peat 'wetting' not being visible at the surface.



**Figure 2: Location of land drains subject to the proposal**

### Site History

6. There is no recent planning history recorded on the site.
7. As previously stated there are a number of existing dams that have been installed by the RSPB since the early 1980s (**Fig. 3**). The RSPB at that time were not aware that planning permission may be required for the works and there is no record of applications being submitted. It should be noted that given the period since construction of the existing dams, they are now immune from planning enforcement and no further action is necessary. A number of photographs of the existing dams have been included with the application and serve to illustrate the final scale and low key appearance of the structures.



**Figure 3: Photo of existing dam structure (local timber with peat infill)**

8. Whilst the historic dam installations were completed outside of the planning system, the current proposals are subject to planning applications as the RSPB approached the Highland Council and were advised that planning permission would be required for the works. There are certain circumstances, for example should the site be classed as agricultural operation, where the works may benefit from deemed consent under permitted development allowances. However, in this instance as the RSPB manage the site for 'biodiversity conservation and beneficial land management', which is not an agricultural or forestry operation, they consequentially do not qualify for 'Agriculture or Forestry' Permitted Development rights.
9. The applicant stated that this first application forms part of a wider phasing of works across the RSPB plantation woodland within the National Nature Reserve. A working group comprising representatives from the Boat of Garten Community Council, Nethybridge Community Council, John Kirk (local farmer), and staff from SNH, CNPA, and RSPB are working together on the project. As

a result of the working group discussions, it was decided that the current application, which excludes wider area proposals, be submitted as the first phase. As such the proposal can be assessed independently of the wider strategy for works and can be determined on its own merits.

## **DEVELOPMENT PLAN CONTEXT**

### **National policy**

10. **Scottish Planning Policy** (SPP, revised 2014) sets out national planning policies that reflect Scottish Ministers priorities for the operation of the planning system and for the development and use of land. Under planning law, planning applications must be determined according to the development plan unless material considerations indicate otherwise. The content of SPP is a material consideration in planning decisions that carries significant weight. The SPP promotes consistency in the application of policy across Scotland while allowing sufficient flexibility to reflect local circumstances.
11. The SPP sits alongside four other Scottish Government planning policy documents:
  - 1) The National Planning Framework (NPF) which provides the statutory framework for Scotland's long term spatial development. The NPF sets out the Scottish Government's spatial development policies for the next 20 to 30 years;
  - 2) Creating Places, the policy statement on architecture and place, containing the Scottish Government's policies and guidance on the importance of architecture and design;
  - 3) Designing Streets, a policy statement putting street design at the centre of placemaking. It contains policies and guidance on the design of new or existing streets and their construction, adoption and maintenance; and
  - 4) Circulars, which contain policy on the implementation of legislation or procedures.

### **Strategic Policy**

#### **Cairngorms National Park Partnership Plan (2012-2017)**

12. The Cairngorms National Park Plan sets out the vision and overarching strategy for managing the Park and provides focus and priorities at a time of limited financial resources. The Plan also provides a strategic context for the Local Development Plan and shows how the four aims of the National Park can be achieved together. It sets out the strategic direction and priorities for the Park.
13. Three long term outcomes for the Park are set out as follows:
  - a) A sustainable economy supporting thriving businesses and communities;
  - b) A special place for people and nature with natural and cultural heritage enhanced; and



- c) People enjoying the park through outstanding visitor and learning experiences.

These outcomes address the interaction of the three main characteristics of the National Park these being that the Park is an internationally important area for nature conservation; a fragile rural economy, and an internationally known tourism destination. Recognising the relationship of these outcomes is at the heart of the National Park. A series of work programmes to help deliver the outcomes is set out in the Plan.

### **Local Plan Policy**

#### **Cairngorms National Park Local Development Plan (2015)**

- 14. All new development proposals require to be assessed in relation to policies contained in the adopted Local Development Plan. The full wording of policies can be found at:

<http://cairngorms.co.uk/uploads/documents/Park%20Authority/Planning/LDPI5.pdf>

- 15. Key policies relevant to the proposed development are summarised below:
- 16. *Policy 4: Natural Heritage* recognises that key to the long term success of the Park is the protection of habitats and species. The policy also recognises that many of the special habitats and species of the Cairngorms need active management to continue to thrive. The policy will ensure that development conserves and enhances the outstanding natural heritage of the Cairngorms National Park. It offers the necessary level of protection from adverse development and enables enhancement.
- 17. *Policy 5: Landscape* presumes against any development that does not conserve and enhance the landscape character and special qualities of the Park.
- 18. *Policy 8: Sport and Recreation* seeks to prevent developments that would see a reduction of public access rights or loss of existing path network.
- 19. *Policy 10: Resources* seeks to protect the resources that exist and facilitate development in a way that minimises any negative impacts and promotes positive improvement to the environment. The policy covers water resources, flooding and carbon sinks and stores amongst others. The policy is used to ensure new development or engineering works that require planning permission is undertaken in such a way to protect our important resources.

### **Supplementary Guidance**

- 20. The CNPA has prepared a suite of Supplementary Guidance (SG) which is part of the Local Development Plan and provides more detail about how to comply with the policies. There is also non-statutory Planning Guidance to help support

the delivery of the Plan. Key topics in this case are guidance on natural heritage and resources.

## CONSULTATIONS

21. **Scottish Environment Protection Agency (SEPA).** SEPA note that the site is relatively flat and the drains do not appear to be within a high energy environment. They consider it unlikely that significant amounts of debris would be washed downstream or that the dams would increase the risk of flooding to downstream receptors.
22. The dams would be inspected on an annual basis by the RSPB with any repair and maintenance identified being completed as a priority.
23. Given the above SEPA have no objection on the understanding that there will be a regime of annual inspection and maintenance and that where dams require repair and maintenance this will be completed as priority.
24. For standing advice and regulatory requirements the applicant can refer to the SEPA website.
25. **Scottish Natural Heritage (SNH)** provided a response following the agreed casework agreement between SNH and the National Park Authorities. The proposal lies within the Cairngorms SAC designated for its Bog Woodland, Caledonian Forest and Very Wet Mire interests and Abernethy Forest SPA classified for Capercaillie. In the view of SNH it appears that in this case the proposal is necessary for conservation management of the site for its qualifying interests in order to restore the hydrology. An appropriate assessment is therefore not required. SNH do not object to the proposal.
26. **The Highland Council: Flood Risk Management Team** is satisfied that the proposed works have the potential to provide a positive impact on flood risk downstream of the site. The blocking of drainage channels should help to slow runoff and reduce sediment loads.
27. The spacing of the dams at 7 – 10 metre intervals should be adequate to ensure that any breach does not result in a sudden release of a large quantity of water. HC feel that the use of timber and peat in the construction of the dams will provide a solid, robust structure.
28. They have requested that any of the ‘experimental design’ dams built using planks with a ‘V’ notch in the middle are located well upstream of the main watercourse reaches, as these have more potential to fail. Any planking or woody debris that is then washed into the watercourse could be transported downstream and become a potential blockage risk.
29. They have assumed that there will be regular monitoring/inspection of the dams once constructed and would be interested in the results of any monitoring schemes/studies that may be associated with this project.



30. Having reviewed the information, the Flood Risk Management Team has no objection to the planning application.
31. **CNPA Natural Heritage Officer** stated that the proposal involves blocking drains within the Abernethy NNR to re-wet areas of Scots pine woodland in order to restore degraded bog woodland habitat.
32. Wet and riparian woodland is included within the Cairngorms Nature Action Plan for woodland. Bog woodland in the Cairngorms National Park is of high ecological value and its restoration and conservation is actively encouraged through the action plan.
33. In the opinion of the Natural Heritage Officer the proposal will help to restore valuable habitat which is considered to be rare in the UK and for which the Cairngorms plays a vital role in its conservation. As such the Natural Heritage Officer fully supports this application, which will help to enhance the ecology of the Abernethy NNR. In summary the development raises no issues in relation to ecology and will have a beneficial impact on biodiversity.
34. **CNPA Landscape Advisor** advises that the proposed dams are small and designed so that there is continuity of vegetation across the structure. The resultant wet woodland is characteristic of the landscape character area and providing access and enjoyment of the woodland are not compromised the proposal would meet the CNPA LDP policy on landscape.
35. **Boat of Garten Community Council**. No response at the time of reporting.

## **REPRESENTATIONS**

36. **Kincraig and Vicinity Community Council (KVCC)** whilst not directly affected by this application, are concerned that changes to the water table created by schemes such as this will have consequences in the future to residents, farmers, and visitors to the area. KVCC would not wish to see an application of this sort within their area and feel that at this early stage they should voice their concern to CNPA.

## **APPRAISAL**

37. The RSPB manage the Abernethy Forest National Nature Reserve for biodiversity conservation and beneficial land management. This is currently done through sensitive plantation restructuring with non-intervention in some areas. The RSPB confirm that no trees are extracted and so in this respect the land subject to the proposal is not considered to be commercial forest and is not in agricultural use. As a result and as previously stated, the applicant does not qualify for permitted development allowances for Forestry or agricultural Operations and planning permission is sought for the works.

38. The applicant has submitted supporting information stating that mire restoration through the re-establishment of the hydrological system, by lifting the water levels within artificial drains (it should be noted that all works are proposed to man-made drainage channels and not natural water courses), is a practice used by many landowners and managers for various objectives. In this particular instance the RSPB have undertaken such works since the early 1980s to re-naturalise plantation woodland within the NNR (**Figure 4**)



**Figure 4: Existing dam showing the construction type and ponding within the artificial drain.**

39. A detailed site inspection identified that the existing dams are low key features which in many cases, particularly those that are long established, are difficult to see as a result of re-vegetation. The use of local materials, being timber and peat, also helped to ensure that the dams do not appear as overly engineered features.
40. The proposal would not involve any modification to, or damming of natural channels such as the Mallachie Burn, with the works proposed to man-made drains only (**Fig. 5**). The existing drains are, on the whole, well vegetated and difficult to see, and not impacting upon the general amenity of the reserve.
41. The proposal is wholly contained within the plantation and would not entail the felling of trees, with only a small amount of selective timber cutting for construction. Therefore, and in light of the above, it is considered that the proposal would have no adverse impact upon the landscape character and visual

amenity of the area. As a result the proposal complies with the relevant provisions of Policy 5 of the CNPA LDP.



**Figure 5: Drain within Abernethy Forest (centreline of photo)**

42. In respect of the qualifying interests being Bog Woodland, Caledonian Forest, Very Wet Mires and Capercaillie, it is demonstrated to the satisfaction of SNH and the CNPA Natural Heritage Officer that the proposal is necessary for the conservation management of the designated site, being the re-wetting of peat and restoration of hydrology. As such, it is also noted that in this instance and as a result of the purpose of the works, an appropriate assessment is not required. The proposals therefore comply with Policy 4 Natural Heritage.
43. In respect of flooding, both SEPA and the Highland Council Flood team have been consulted. They recognise that the site is relatively flat and that this is a low energy environment. Furthermore the construction methods and spacing for the dams are considered to provide for robust water management, with it being unlikely that significant amounts of debris would be washed downstream or that the dams would increase the risk of flooding to downstream receptors. Indeed the Highland Council Flood Risk Management Team consider that the proposals would provide a positive impact on flood risk downstream of the site reducing run-off and sediment loads. Both SEPA and the Flood Risk Management Team assume that there would be regular monitoring of the site, and it is



considered that this should be conditioned to any consent. In light of this the proposal accords with the relevant provisions of Policy 10 of the CNPA LDP.

44. There is currently an established access route through the Abernethy Forest NNR which appears popular to locals and visitors. This access is maintained and would remain unaffected by the works due to the localised extent of the water pooling, 're-wetting' and its containment within the site area. Recent track improvements have ensured that the access is maintained through a partial track raising. The applicant has been reminded of their obligations to contact the local planning authority for advice prior to any future works to access tracks. Therefore, as access would not be compromised, the proposal accords with the relevant provisions of Policy 8 of the CNPA LDP.
45. A further benefit from the proposal is that of carbon retention. Raising the water levels re-wets the peat with the upper and lower levels of the peat holding different amounts of carbon. Re-wetting of peat will ensure that carbon continues to be stored. As previously noted there would be no felling required as part of the proposal that would further retain carbon in the woodland. Therefore, in respect of carbon sinks and stores, the proposal accords with the relevant provisions of Policy 10 of the CNPA LDP.

## **CONCLUSION**

46. The proposed works are relatively low key features within the Abernethy forest. The proposed works form part of the wider biodiversity conservation and beneficial land management offered the site by the RSPB with benefits of habitat improvement, biodiversity, carbon retention, and water management. There are no recognised detrimental impacts arising as a result of the works and consultation returns offer support to the proposal, furthermore there are no objections received. The proposal complies with the relevant provisions and intent of the Cairngorms National Park Local Development Plan 2015.

## **IMPLICATIONS FOR THE AIMS OF THE NATIONAL PARK**

### **Conserve and Enhance the Natural and Cultural Heritage of the Area**

47. The proposed development fully supports this aim, as the proposal is necessary for the conservation management of the designated site and will help to restore valuable habitat which is considered to be rare in the UK and for which the Cairngorms plays a vital role in its conservation.

### **Promote Sustainable Use of Natural Resources**

48. The proposed development fully supports this aim, making use of on-site materials and low impact methods in construction.

### **Promote Understanding and Enjoyment of the Area**

49. The proposed development readily supports this aim, providing improved habitat with no impact upon access the National Nature Reserve.



**Promote Sustainable Economic and Social Development of the Area**

50. The proposed development readily supports this aim by enhancing the environment within a popular nature reserve with continued access for low impact outdoor activities.

**RECOMMENDATION**

**That Members of the Committee support a recommendation to GRANT FULL PLANNING PERMISSION for the restoration of bog woodland habitat by construction of dams subject to the following condition:**

- I. Notwithstanding the approved details, and prior to the commencement of the installation of dams in each respective drain section, a Construction Method Statement (CMS), detailing the methods of construction and location of each of the dam structures within the drainage network, together with a schedule for monitoring the condition of the structures and details of aftercare and regular maintenance, has been submitted to and approved in writing by the CNPA, as planning authority. Thereafter the development shall proceed on each of the drain sections in strict accordance with the approved details and the results of the monitoring shall be submitted to the CNPA annually on the anniversary of the date of the commencement of the development, unless otherwise agreed in writing by the CNPA.

Reason: As three options for construction are available and the precise location of each construction type within the drainage channel network is not yet agreed. To ensure that the dam construction type is suitable to the location within the drainage network, and that suitable aftercare will safeguard the drain network from breach or flood risk to downstream receptors.

**Informatives:**

- 1 Prior to the commencement of development, a notice of the intended date of initiation of development shall be submitted to the CNPA acting as Planning Authority and such notification shall contain the information set out in the 'Notification of Initiation of Development' Notice as appended, pursuant to Section 27A(1) of the Town & Country Planning (Scotland) Act 1997.
- 2 Following the completion of the development, a notification of the completion shall, as soon as practicable, be submitted to the CNPA acting as Planning Authority and such notification shall contain the information as set out in the 'Notification of Completion of Development' Notice as appended, pursuant to Section 27B(1) of the Town & Country Planning (Scotland) Act 1997.

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**Date: 02 Nov 2015**

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