

CAIRNGORMS NATIONAL PARK AUTHORITY

Title: REPORT ON CALLED-IN PLANNING APPLICATIONS

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DEVELOPMENT PROPOSED:

- 1. FULL PLANNING PERMISSION FOR ERECTION OF BOREHOLE COMPOUND, FORMATION OF ACCESS TRACK AND ASSOCIATED WORKS (REVISED AND RETROSPECTIVE APPLICATION);**
- 2. FULL PLANNING PERMISSION FOR INSTALLATION OF CLEAR WATER TANK AND ASSOCIATED WORKS (REVISED AND RETROSPECTIVE APPLICATION); &**
- 3. FULL PLANNING PERMISSION FOR USE OF LAND FOR DEPOSITING OF EXCESS INERT MATERIAL (RETROSPECTIVE APPLICATION);**

ALL AT LAGGAN WATER TREATMENT WORKS, LAGGAN

REFERENCES: 06/402/CP, 06/404/CP & 06/405/CP

APPLICANT: SCOTTISH WATER, C/O SCOTTISH WATER SOLUTIONS, TORRIDON HOUSE, BEECHWOOD BUSINESS PARK, INVERNESS

DATE CALLED-IN: 6 OCTOBER 2006

RECOMMENDATION: RETROSPECTIVE APPROVAL, FOR ALL THREE APPLICATIONS, SUBJECT TO CONDITIONS

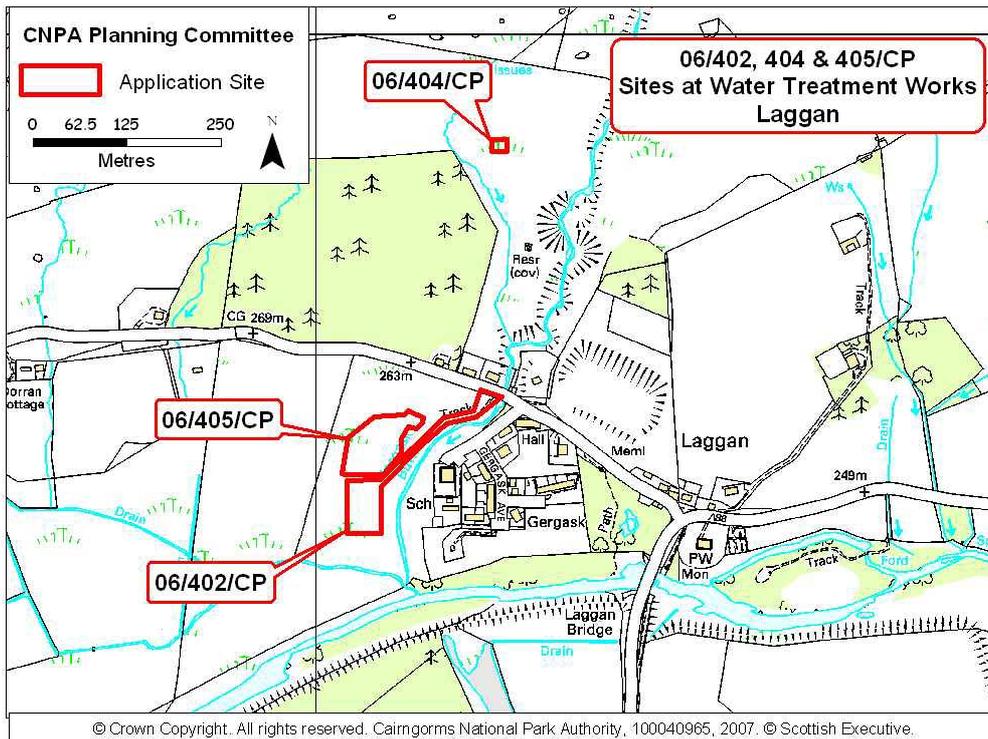


Fig. 1. Location Plan

SITE DESCRIPTION AND PROPOSAL

1. This report covers three separate but related retrospective planning applications for works directly related to and associated with the creation of a new water treatment works system for the community of Laggan. The sites of the developments are located to the west and north of the village. As can be seen from the location plan and the photographs contained in this report, the land to the immediate west of the village on the south side of the public road, and adjacent to the Gergask Burn, is flat and open and constitutes part of the River Spey flood plain. The land on the north of the public road is steeply sloping and comprises a commercial woodland plantation, with open land at the higher level above the village.

Background

2. In April 2005, the CNPA called-in an application for full planning permission for the erection of a new water treatment works, the siting of associated kiosks and the formation of associated boreholes and access tracks (05/156/CP) at this site. Subsequently, on 26 August 2005, the CNPA Planning Committee agreed with an officer recommendation to grant permission, subject to planning conditions. The decision notice was subsequently issued to Scottish Water on 7 September 2005.

3. Late in 2005, works commenced on site. However, shortly after, concerns were raised from owners of neighbouring properties and the Laggan Community Association, about failures to comply with the approved plans. In 2006, it became clear that what was being constructed on site did not comply with the approved plans and the conditions of the planning permission granted by the CNPA.
4. As well as the failure to comply with some conditions of the previous approval, the breaches of planning control related to the following;
 - *the access track within the woodland on the north side of the public road, serving the proposed clear water tank compound was wider and different in alignment and level to that approved, and had resulted in considerable engineering operations and additional tree felling. A turning area had also been formed at the mid point.*
 - *the borehole compound and its associated kiosks and equipment on the south side of the public road was different in size and layout to that approved.*
 - *the access track serving the borehole compound on the south side of the public road had been created by upfilling above existing ground levels.*
 - *infill material from excavation works carried out elsewhere had been deposited on land on the south side of the public road.*
 - *the size and layout of the clear water tank compound on the north side of the woodland was different to that approved.*
5. The matter was brought to the attention of the CNPA Planning Committee (under AOB) in June 2006 and agreement was given to pursue whatever action (enforcement or otherwise) was considered necessary. Thereafter discussions took place with the applicant's representatives and in July 2006, the applicants confirmed their intention to submit four separate retrospective applications for the work that had been carried out. **Three of these applications were submitted in September 2006 and these are the ones which are the subject of this report. A fourth application, for the retrospective construction of the access track on the north side of the public road and serving the clear water tank compound, has not, at the time of writing, been submitted.**

06/402/CP

6. This application refers to the formation of the access track on the south side of the public road and the borehole compound. The works here include the 3 metre wide track, which is constructed at varying heights above the existing ground levels (maximum 1.8m) and which has graded edges. At the junction with the public road, there is a layby and tubular steel gates with stock fences. The borehole compound, which is also above original ground levels by approximately 1m, is surrounded by a metal security fence. Within the compound are 3 borehole kiosks, a chlorine contact tank, a water treatment works room and a control room, and an inlet tank. Above ground equipment is coloured dark green. Within a wider area of ground around the compound, and within stock proof fencing are areas proposed for screen planting. Some screen planting is also proposed along the west side of the new access track. An existing agricultural access and track on the east side adjacent to the Gergask Burn is to remain for the use of the landowner. (Figs. 2 & 3).



Fig. 2. Access Track and Borehole Compound Viewed from Public Road Looking South.



Fig.3. Access Track and Borehole Compound Viewed from Public Road Looking South.

06/404/CP

7. This application refers to the formation of the clear water tank compound on the elevated and open north side of the village above the woodland. The compound is enclosed by a 3 metre high metal security fence. Within the compound, there is the clear water tank, a glass reinforced instrumentation and power kiosk and a flow meter chamber. All above ground plant is coloured dark green. Outwith the compound but within the red line site boundaries, is a bund which it is proposed to plant. A steel access gate provides access to the compound. (Fig. 4.)



Fig. 4. Clear Water Tank Compound Looking East

06/405/CP

8. This application refers to the unauthorised depositing of excess ground material excavated from the works to create the access tracks, the borehole compound and the clear water tank. As a temporary measure, this material was deposited in a natural hollow lying to the north west side of the borehole compound. It became evident to the applicants that if this excess material were to be transported off site, it would require to be taken to a licensed landfill site in Perth. It was considered by the applicants that there would be considerable environmental impacts from this (300 lorry loads approximately) and further to discussions with the landowner, it was decided that the material could provide an agricultural improvement at the site. As such, the applicants now seek a permanent permission for the depositing of this excess material. The area in question amounts to approximately 2,582 square metres. The material raises the ground levels in the hollow by approximately 1.6m. (Fig. 5)



Fig. 5. Deposited Excess Material in Foreground

DEVELOPMENT PLAN CONTEXT

9. In the **Highland Structure Plan 2001, Policy G2 (Design for Sustainability)** states that developments will be assessed on the extent to which they, amongst other things, are compatible with service provision; contribute to the social and economic development of the community; impact on resources such as habitats, species, landscape and freshwater systems; and are affected by significant risk from natural hazards, including flooding, unless protective measures are incorporated, or the development is of a temporary nature. **Policy L4 (Landscape Character)** seeks to maintain and enhance present landscape character. In principle, the structure plan highlights the

importance of a satisfactory infrastructure system to promote economic development. This general support is encompassed in **Policy U3 (Water Supplies)** which seeks to safeguard water resources in terms of volume and quality of water. **Proposal NH1 (Flood Consultation Areas)** advises that Local Plans will identify areas with a perceptible risk of flooding. Within these areas, all development proposals will be assessed for their compatibility with the flood risk and with the flow character of the watercourse.

10. The **Badenoch and Strathspey Local Plan 1997** includes in its strategic objectives the need to continue to upgrade and extend essential infrastructure networks and promote the sustainable use of the area's resources. In the Laggan settlement statement, the area to the south of the minor road adjacent to the west of the Gergask Burn where the borehole compound is proposed, is shown as "**Amenity Woodland**". **Policy 8.15.2. (Trees)** seeks to safeguard existing trees and woodland and encourage their natural regeneration together with reinforcement planting at various locations in and around the village including beside the Gergask Burn. This area is also denoted as being liable to flood risk, where general **Policy 2.4.12. (Flooding – Development Restraint)** presents a general presumption against any building development except where it is considered essential to continued agricultural use of the land. In the Laggan settlement statement, **Policy 8.14.2. (Water Supply)** states that spare capacity in the existing water supply is limited and may have implications for phasing of development. It is likely that a new source will require to be developed to meet longer term needs.

CONSULTATIONS

11. **SNH** have been consulted on all three applications. The site of the borehole compound and southerly access track lies approximately 100m from the River Spey SAC and SSSI. The area of deposited ground material lies approximately 200m from these designations. The clear water tank compound is situated approximately 0.6km from these designations. In relation to these interests, SNH does not consider that an Appropriate Assessment is required or that the proposals will have any adverse affects. The area around the borehole compound, southerly access track and landfill area supports a population of breeding waders, including lapwing, snipe, oystercatcher, curlew and redshank. A survey carried by the RSPB in 2000 identified the area as having a high density of breeding waders. However, SNH do not consider that any of the proposals will have an impact on the breeding waders at this location.

12. **Highland Council's Area Roads Manager** has no comments to make on the application for the clear water tank. The formation of the southerly access track complies with the requirements of the conditions on the previous application in relation to layby provision and visibility splays. However, in relation to the formation of the southerly access track, borehole compound and the depositing of the material, he recommends that SEPA be consulted in relation to possible flooding issues. Subject to confirmation from SEPA that the development will not materially increase the risk of flooding to properties upstream and downstream of the site, he has no comments.
13. **Highland Council's Environmental Health Officer** has no objections to the application for the depositing of the excess ground material.
14. **Highland Council's Contaminated Land Officer** also has no comments to make on the landfill application.
15. **The CNPAs Natural Heritage Group** advises that the clear water tank compound is located in an area of rough grazing above the village and the woodland plantation. The site is where the hillside levels slightly prior to the very steep upper sides of the Gergask Craig. There are extensive views to and from the site especially to the south and east. There is a small bund on the south side of this compound but the screening effect of this is limited and any planting here alone may reinforce the fragmentary and disconnected nature of this compound. The borehole compound, southerly access track and deposited excess ground material sits below the public road on land which was formerly flat and boggy, typical of the floor of the Strath at this location. The deposited material and track have obliterated the rich grass and sedge area and created an area of higher ground which has now been exclusively grassed. The track is also at odds with the general landscape creating an artificial and incongruous element. There is a general complicated arrangement of tracks and fence lines. The tip face of the deposited material is at a steep angle and so attracts the eye and draws attention to itself as an artificial feature. The borehole compound is also raised and forms an "island" in the landscape. Consequently, it is highly visible and diminishes the quality of the landscape and the relationship with the village. All of this is unfortunate because the finished landscape does not reflect the quality of the settlement or its setting.
16. **The CNPAs Natural Heritage Group** does however, suggest some possible mitigation measures. Scots Pine planting around the clear water tank compound, including planting which would connect the compound to the existing woodland plantation, could be carried out. The western edge of the deposited material could be graded back to a much more gradual slope. This will minimise the engineered edge. Finally, the borehole compound and its raised embankments could be planted with local origin Aspen. This should be arranged in clumps rather than simply ringing the compound, and should link visually with

some off site planting of the same species. This would tie in the compound to the edge of the village making it appear less isolated and at the same time screen the compound. It would also be very good for the local biodiversity. The off site planting could be in the primary school grounds and on farm land just outside the village edge.

17. **SEPA** has no objections to the clear water tank compound application. However, in October 2006, they did forward **concerns, on the basis of flood risk**, to the applications for the depositing of the material and the raised southerly access track and borehole compound. They commented on the submitted "Post Development Flood Risk Assessment". The main points of concern were that; there was no allowance made for climate change; there were unclear results on the back water effect from the combined 1 in 200 year flood event (River Spey and Gergask Burn); no figure for the percentage of earthworks above ground level had been given in relation to the amount lying below the 1 in 200 year event; and there was no estimation of pre and post development peak levels to neighbouring properties and the school. There was a need to confirm the effect, if any, (area and inundation) on existing properties caused by the development. **SEPA** therefore recommended that before deciding if compensatory storage or reinstatement of the existing floodplain is an issue, the models needed to be re-run taking account of the aforementioned inadequacies.
18. Further information was submitted. However, in November 2006, **SEPA** advised that while the submission concluded that the effect of the developments on water level was considered to be insignificant, it did not supply the required data. At the same time, **SEPA** advised that they had received a letter of complaint from a neighbour with regard to the works and the additional flood risk now caused to that neighbouring property. Attention was drawn by **SEPA** to SPP7 (Planning and Flooding) which states that "*Landraising should have a neutral or better effect on the probability of flooding elsewhere, including existing properties.*" **SEPA** therefore insisted that the requested data be supplied so that consideration could be given to the post development increase in flood risk to neighbouring properties.
19. Following on from this, **SEPA hydrologists** had further discussions with the applicants and carried out site visits in December 2006 (a neighbouring property was affected by floodwater following a 1 in 11 year flood event at the location) and again in January 2007. On 16 January 2007, **SEPA** finally confirmed that, as a result of these visits and discussions, and further checks of the flood plain levels and the submitted flood risk assessment information, they accepted the conclusion that the landraising works associated with the applications for the material infilling and the access track and borehole compound constructions, will have little or no effect on any flooding in the vicinity. **SEPA confirmed they are of the view that the flooding incident in December 2006, which resulted in flood water incursion below the**

ground floor level of a neighbouring property (“Linreoch”), was not caused by the earthworks carried out by the applicants.

20. **SEPA** have also confirmed that the depositing of the excess ground material falls within an exemption category and therefore does not require a Waste Management Licence.

REPRESENTATIONS

21. The applications have attracted 4 letters of representation. **These are attached for information.** The issues raised include:

- concern that the proposals do not include a retrospective application for the northerly access track serving the clear water tank – this should be addressed.
- concern about the excess material and landraising works in the flood plain, and the potential impact, on neighbouring properties, in particular “Linreoch” which lies to the east of the Gergask Burn on the south side of the primary school.
- information is provided about how “Linreoch” was flooded in December 2006, and that this was a direct result of the developments.
- concern that the flood risk issue was not addressed earlier and before works started on site.
- the claim that Scottish Water did not wish to pay for transporting the deposited material, is not a good enough excuse – compensation may be sought.
- elsewhere in the UK, if an area of ground is raised, it is recommended that another area nearby is dug out to compensate – this should be done here.
- flooding of “Linreoch” will cause damage to antique possessions, and may affect injured birds of prey that are kept at the site for the RSPB.
- concern that increased flood risk will make “Linreoch” impossible to insure and sell in the future.

APPRAISAL

22. The first matter to consider is that these three applications are **retrospective**. Scottish Water and their agents, have conceded that they progressed on site and made changes to the approved development without recourse to the CNPA. In general terms, this is considered to be more than unfortunate and indeed unacceptable. However, once the concerns were raised with them and discussions took place, it became apparent that there was an acceptance of their failings in this respect, and that there was a need for them to address the situation. Clearly, enforcement action was (and still is) an option. However, Scottish Water opted to exercise their right to try and rectify the unauthorised situation, by submitting retrospective applications. **Where retrospective applications are submitted, guidance is that**

no enforcement action is taken while the applications are being assessed. In respect of the three unauthorised developments, this is the position that we now find ourselves in. The fourth unauthorised development (the access track on the north side of the public road serving the clear water tank compound) remains outstanding. This matter is covered later in this report (Paragraph 32). It is also necessary to assess the retrospective applications in the normal way. The fact that the works have already been carried out should not form an integral part of the assessment.

23. As covered at the time of the previous application in 2005, the principle of improving the water supply for Laggan is unquestionable. There are also technical reasons for requiring the boreholes extracting water in a location close to the Gergask Burn. The issues that these applications therefore raise include, the impact on natural heritage, landscape and visual impact, and flood risk.

Impact on Natural Heritage

24. The site on the south side of the public road lies close to SAC and SSSI designations. The land is also considered to be important for a population of breeding waders. However, SNH have confirmed that they have no objections to any of the developments. No Appropriate Assessment is required and SNH consider that there will be no adverse effects on either the designations or the bird populations at this location.

Landscape and Visual Impact

25. It is considered that both the sites (north and south of the public road) are prominent in the landscape. The site of the clear water tank compound is elevated above the village and is open land detached from the woodland plantation. The southerly access track and borehole compound is on low lying open land on the edge of the settlement. The CNPAs Natural Heritage Group consider that the combined effect of these three applications has had a significantly negative impact upon the character of the local landscape and the visual relationship of the village to its surroundings. As described in paragraph 16 above, suggestions have been put forward to help mitigate these impacts. While it was known that some of the suggestions (additional tree planting between the clear water tank compound and the existing woodland, and between the borehole compound, the Gergask Burn and the village) involved land outwith any control of Scottish Water, they were put to the applicants.

26. In response, the applicants have confirmed that Scottish Water have secured an early entry agreement with the relevant landowners to facilitate the construction works but that they do not have any control over any land outwith the red line boundaries of the applications. The red line boundaries are drawn quite tightly around the compounds and the access track. They have therefore confirmed that tree planting cannot be undertaken in some of the areas suggested. Tree planting can however be undertaken in the areas shown on the drawings, which includes on the bund on the south side of the clear water tank compound, along part of the west side of the southerly access track and within the borehole compound. With regard to the suggestion that the west edge of the deposited material (which is now grassed), be regraded and material redistributed over the site, the applicants have stated that, if this was to happen, the height of the area would be increased as would the gradient of the east slope. The concern would be that it would result in a greater landscape impact. There is also a concern that if any material is removed it would de-stabilise the track. Redistributing over a wider area would again involve land outwith Scottish Waters control. The applicants therefore do not propose to undertake any further works at the deposited material site.
27. In relation to this, it could be possible to insist that the suggested mitigation measures be put in place. However, this would require the agreement of the landowners and a Section 75 Legal Agreement. It is understood that landowner agreement may not be forthcoming.
28. My assessment of this situation is that, the suggestions for additional tree planting would certainly be beneficial, and desirable, in the wider context but, in planning terms, I do not consider that they are essential to accepting the developments as completed. Nor do I feel that without agreement on them, there is a strong enough reason for refusal. The sites, while prominent, do not carry any landscape designations, such as National Scenic Area status, and the tree planting that can be carried out on land within the applicants control, will provide a level of natural screening. The area on the south side of the public road is close to the built settlement edge and is not isolated remote countryside. Indeed it should also be considered that the woodland on the north side of the public road, is a commercial plantation and that these trees could be extracted at some time in the future. Weighed up against the need for a new water supply in Laggan, I do not consider that the landscape and visual impact of the proposals, subject to landscaping conditions, is unacceptable in terms of planning policy or the aims of the Park.

Flood Risk

29. One of the main concerns relating to the applications on the south side of the public road is that of flood risk. The letters of representation clearly indicate concerns about the fact that the landraising aspects of the developments have the potential to increase the potential for flood risk to nearby properties. Although the site is clearly within the flood plain, flood risk was not considered to be a concern at the time of the previous application because the proposals did not include any proposals for landraising.
30. As a result of these concerns, and the flood event in December 2006, SEPA's hydrologists have considered thoroughly the flood risk potential as a result of the developments. The details of the consultations with SEPA are detailed in paragraphs 17-19. However, the final conclusion, is that the developments will have little or no effect on any existing flooding in the vicinity. In respect of the flooding that occurred in December 2006, following investigations, SEPA are of the view that, the flooding of "Linreoch" did not occur because of the development proposals.
31. I am content that the investigations into the potential increase in flood risk to nearby properties have been thorough, and with SEPA now having no objections, I cannot resist the developments on this basis.

Unauthorised Track (Figs. 6 & 7)

32. As previously mentioned, there remains an outstanding issue of the unauthorised access track that has been constructed on the north side of the public road. At the time of writing, there has been no retrospective application submitted for this element. As I understand it, the delays have been in relation to continued negotiations with the landowner. No formal enforcement action has been taken because it was always understood that a retrospective application was imminent. Now that we are in a position to determine the other three applications, I do not feel that it is appropriate to delay the instigation of formal enforcement procedures any longer. As part of my recommendations below, I therefore seek the Committee's further agreement to taking forward this process. This could involve notices being served on all parties with an interest in the land concerned.



Fig. 6. For information – Unauthorised Access Track

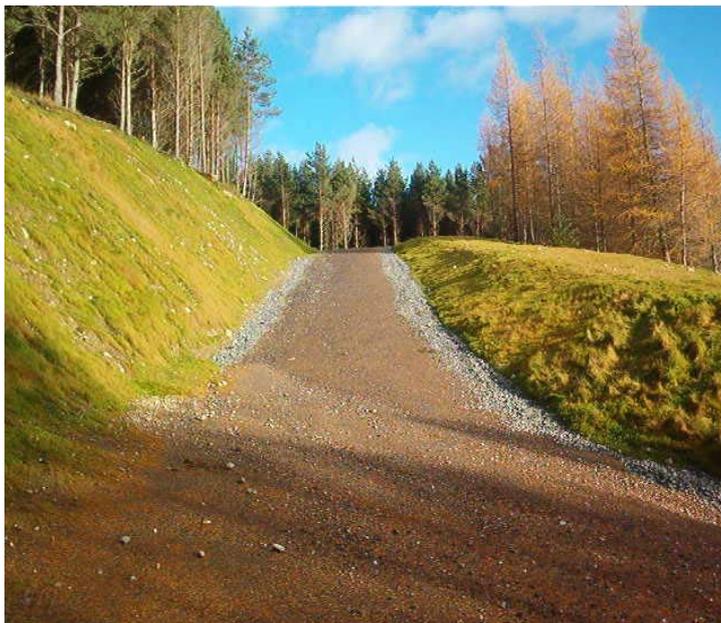


Fig. 7. For Information – Unauthorised Access Track

IMPLICATIONS FOR THE AIMS OF THE NATIONAL PARK

Conserve and Enhance the Natural and Cultural Heritage of the Area

33. The developments do not impact on any natural heritage designations or on any cultural heritage feature. However, there is some concern about the visual and landscape impact and the developments cannot be considered to enhance the area. However, additional screen tree planting will take place which will help mitigate, and I do not feel that the visual and landscape impact of this water infrastructure project which is important for the Laggan community, is so significant to justify refusal.

Promote Sustainable Use of Natural Resources

34. The improvement to the Laggan water supply is seen as positive to this aim.

Promote Understanding and Enjoyment of the Area

35. There are no direct implications for this aim. However, it could be argued that the landscape quality of the area for visitors has been reduced by the developments.

Promote Sustainable Economic and Social Development of the Area

36. The provision of an improved water supply will help to improve and sustain the Laggan community.

RECOMMENDATION

37. That Members of the Committee support a recommendation to:
38. **Grant Full Planning Permission for Erection of Borehole Compound, Formation of Access Track and Associated Works (Revised and Retrospective Application), Laggan Water Treatment Works, Laggan (06/402/CP), subject to the following condition:**
1. The development shall be landscaped and maintained in accordance with a scheme which shall be submitted to and approved by the CNPA acting as Planning Authority within 2 months of the date of this consent. The scheme shall indicate the siting, numbers, species and heights (at the time of planting) of all trees, shrubs and hedges to be planted and to the extent of any areas of earthmounding, and shall ensure:-
 - (a) Completion of the scheme during the planting season next following the date of this consent, or such other date as may be agreed in writing with the CNPA acting as Planning Authority.

- (b) The maintenance of the landscaped areas in perpetuity in accordance with the detailed maintenance schedule/table. Any trees or shrubs removed, or which in the opinion of the CNPA acting as Planning Authority, are dying, being severely damaged or becoming seriously diseased within three years of planting, shall be replaced by trees or shrubs of similar size and species to those originally required to be planted.

39. **Grant Full Planning Permission for Installation of Clear Water Tank and Associated Works (Revised and Retrospective Application), Laggan Water Treatment Works, Laggan (06/404/CP), subject to the following conditions:**

1. The development shall be landscaped and maintained in accordance with a scheme which shall be submitted to and approved by the CNPA acting as Planning Authority within 2 months of the date of this consent. The scheme shall indicate the siting, numbers, species and heights (at the time of planting) of all trees, shrubs and hedges to be planted and to the extent of any areas of earthmounding, and shall ensure:-
 - (a) Completion of the scheme during the planting season next following the date of this consent, or such other date as may be agreed in writing with the CNPA acting as Planning Authority.
 - (b) The maintenance of the landscaped areas in perpetuity in accordance with the detailed maintenance schedule/table. Any trees or shrubs removed, or which in the opinion of the CNPA acting as Planning Authority, are dying, being severely damaged or becoming seriously diseased within three years of planting, shall be replaced by trees or shrubs of similar size and species to those originally required to be planted.
2. Within 2 months of the date of this consent, a written statement on the potential for contamination and any mitigation measures required at the existing Water Treatment Plant shall be submitted for the further written approval of the CNPA acting as Planning Authority. Any contamination mitigation measures identified and agreed shall be implemented on the cessation of the use of the existing Water Treatment Plant.

40. **Grant Full Planning Permission for Use of Land for Depositing of Excess Inert Material (Retrospective Application), Laggan Water Treatment Works, Laggan (06/405/CP):**

No conditions

41. **The Committee agree to instigate appropriate processes of Enforcement Action to rectify the breach of planning control represented by the unauthorised construction of the access track to the north of the public road, serving the clear water tank compound.**

Determination Background

The applications were called-in on 6 October 2006. SEPA's concerns regarding flooding were first raised in late October 2006 and it took until the end of January 2007 for the applicants to satisfy SEPA in this regard. Matters raised in relation to landscape and visual impact, and possible mitigation measures, were raised with the applicant, following receipt of the CNPAs Natural Heritage Group response, in late November 2006. The applicants response on this was received on 31 January 2007.

Neil Stewart
1 March 2007

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The map on the first page of this report has been produced to aid in the statutory process of dealing with planning applications. The map is to help identify the site and its surroundings and to aid Planning Officers, Committee Members and the Public in the determination of the proposal. Maps shown in the Planning Committee Report can only be used for the purposes of the Planning Committee. Any other use risks infringing Crown Copyright and may lead to prosecution or civil proceedings. Maps produced within this Planning Committee Report can only be reproduced with the express permission of the Cairngorms National Park Authority and other Copyright holders. This permission must be granted in advance.