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**CAIRNGORMS NATIONAL PARK AUTHORITY**

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**Title: REPORT ON APPEAL RESPONSE TO  
DEPARTMENT OF PLANNING AND  
ENVIRONMENTAL APPEALS**

**Prepared by: JANE SHEPHERD  
PLANNING MANAGER  
(DEVELOPMENT MANAGEMENT)**

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**DEVELOPMENT PROPOSED:** Approval of Matters Specified in Conditions 1 (plans & particulars), 4 (landscaping information re-trees), 8 (details required by condition 1), 9 (management & maintenance statement), 10 (details required by condition 1), 11 (phasing plan), 12 (detailed design statement), 14 (contoured site plan), 16 (construction method statement), 17 (management & maintenance statement) and 19 (programme of archaeological work) of Planning Permission in Principle 07/144/CP on Land north west of Dalfaber Farm, Dalfaber Drive, Aviemore

**REFERENCE:** 2013/0073/MSC

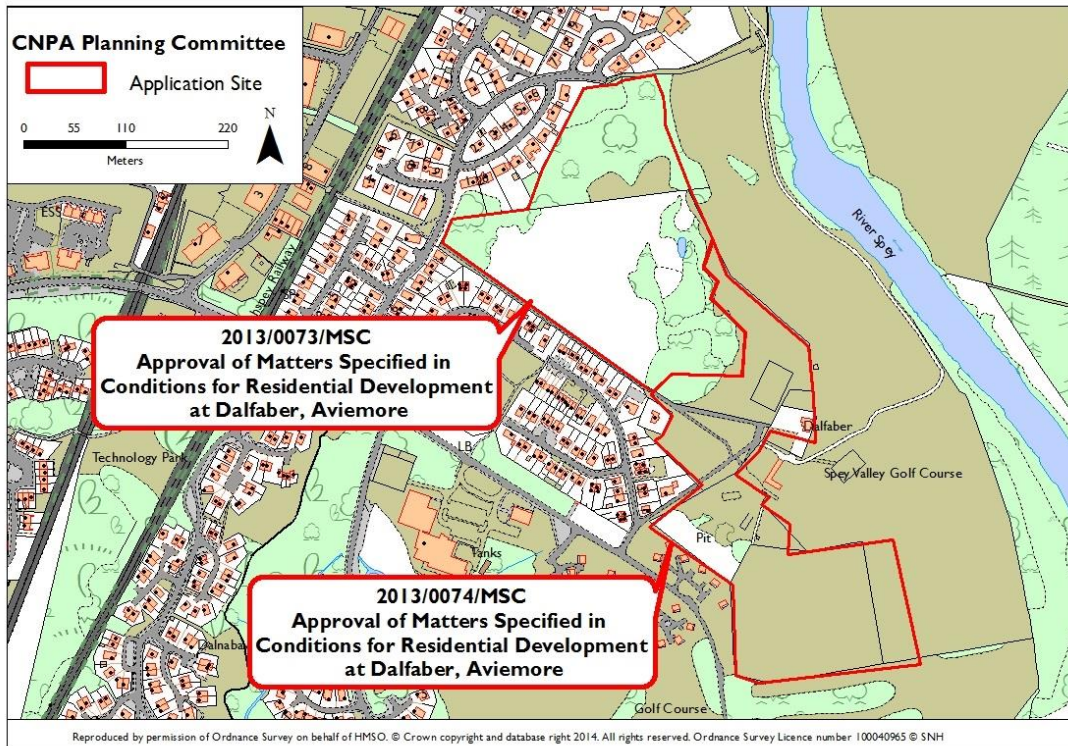
**DEVELOPMENT PROPOSED:** Approval of matters specified in conditions 1 (in part) (plans & particulars), 4 (landscaping information re-trees) 8 (details required by condition 1), 9 (management & maintenance statement), 10 (details required by condition 1), 12 (phasing plan), 13 (detailed design statement), 15 (contoured site plan), 17 (construction method statement), 18 (management & maintenance statement), and 20 (programme of archaeological work) of Planning Permission in Principle 07/145/CP on Land north west and south of former Steadings, Dalfaber Farm, Aviemore

**REFERENCE:** 2013/0074/MSC

**APPLICANT:** REIDHAVEN ESTATES

**DATE CALLED-IN:** 11 March 2013

**RECOMMENDATION:** That this report should form the basis of the response to the procedure notice issued by DPEA



**Grid reference: (E/275424, N/801039)**  
**Figure 1 - Location Plan**

## BACKGROUND AND PURPOSE OF THIS REPORT

1. An appeal has been made by the applicants against the decision of CNPA on 13 February 2015 to refuse the MSC applications 2013/0073/MSC and 2013/0074/MSC. The reasons for the refusal relate to legal issues as CNPA considered that the original planning permissions in principle (PPIP) had lapsed.
2. As part of the appeal process, the Reporter has issued a Procedure Notice which requires CNPA to respond on the following matters:

### **Matter 1: Identification of the application information**

The appellant and CNPA were required to reach agreement on a comprehensive list of all documents, plans and other information, which the Reporter should consider to be part of the application. An agreed table of documents was submitted by CNPA on 19 August with the appellant's agreement. An extract of the table is included as Table 2 of this report.

### **Matter 2: Compliance with notification and consultation process**

CNPA were required to submit details of what further notification and external consultation procedures remain to be carried out, giving the reasons and relevant existing contact details to facilitate such procedures. The CNPA's response, submitted on 4 August, was that a full re-consultation was required to include all consultees and neighbour notifications.

### **Matter 3: Views on the Merits of the Application**

Without prejudice to the arguments submitted about the validity of the applications, the CNPA is asked to provide their views on the merits of the application, assessed in terms of the development plan and any material considerations

### **Matter 4: Suggested Conditions and Planning Obligations**

The Reporter needs to know what conditions and any planning obligations the CNPA considers should be imposed on the application were it to be granted.

3. Consideration of the merits is complicated by the fact that, in normal circumstances, the Planning Committee would have comments from all relevant consultees and the representations generated by neighbour notification. The responsibility for further consultation and the timetabling of this process rests with the Reporter and will not be completed prior to consideration of this report. CNPA will provide specific comments on consultee responses if required by the Reporter. Internal consultation has taken place with Ecology Officer, Landscape Officer, Outdoor Access Officer and Economic Development Manager.

4. The purpose of this report is to provide the Planning Committee with officer’s views on the merits of the applications together with suggested conditions and legal agreements for their consideration to form the response to the Reporter on Matters 3 and 4.

**SITE DESCRIPTION AND DEVELOPMENT**

5. This report covers two interlinked applications to discharge conditions for planning permissions in principle (the original PPIPs) relating to residential developments on adjacent areas of land in Dalfaber, in the northern area of the settlement of Aviemore.
6. The site extends to 11.2 ha lying east and north of Aviemore and west of the River Spey. The sites are within the Cairngorm Mountain National Scenic Area.
7. The overall area of land is bounded to the north-west, west and south west by existing residential developments in Dalfaber. The character of these residential areas varies from detached properties in individual plots in the site at the north to higher density semi-detached properties, holiday lodges and ‘four-plex’ units in the site to the south. The sites are bounded by the golf course and open land to the east and south.
8. Full references are provided in Table 1.

Table 1: References for applications and appeals		
Site/Reference	Site 1: 10 serviced plots	Site 2: 65 houses & farmhouse
Applications	07/0144/CP	07/0145/CP
Original PPIP/Appeal Decisions	PPA – 001 – 2000	PPA – 001 – 2001
MSC Applications	2013/0073/MSC	2013/0074/MSC
MSC Appeals	PPA – 001 – 2016	PPA – 001 – 2017

9. Note that although the planning permission in principle has been granted for 83 plots on Site 1 (07/145/CP), application 2013/0074/MSC details only 65 plots; a reduction in 18 plots (not including the farmhouse restoration into a

further residential unit). A total of 76 units are therefore proposed across the two sites. The appeal decisions are attached as **Appendix I**.

10. It should also be noted that consideration of these applications is complex due to the repetitive and overlapping nature of the planning conditions in the original PPIP. Furthermore, the applicant has applied for only partial discharge of Condition 1. As such, officers have had to take a structured approach to their consideration. The provisions in the original PPIPs in relation to a plot by plot approach to the development are a particular concern.
11. In dealing with these applications, and in an effort to achieve a positive outcome, officers have sought clarification and additional information from the applicant since the submissions were originally made. The submissions of new information during the course of the application have led to a considerable degree of confusion over what are the relevant plans and documents for consideration. This led the Reporter to clarify the status of submitted plans through Matter 1 in the Procedure Notice.
12. The most up-to-date submissions made for the current applications are shown in Table 2. All documents/drawings are available for viewing on the CNPA website, under the 2013/0073/MSC and 2013/0074/MSC references.

**Table 2: Plans and Documents**

<b>DRAWING/ DOCUMENT TITLE</b>	<b>DRAWING NUMBER</b>	<b>DATE ON PLAN/ DOCUMENT</b>	<b>DATES OF SUBMISSION (or date published on CNPA website)</b>
Cover letter with AMSC Application (2013/0074/MSC)		25/02/13	25/02/2013
Cover letter with AMSC Application (2013/0074/MSC)		25/02/13	25/02/2013
Site Layout Plan	A3583/L 40B	October 2013	07/04/14
Site 2 Location Plan	A3583/L(-)43A	01/03/13	18/03/13
Overall Site Location Plan	A3583/L(-)41A	01/03/13	18/03/13
Phasing Plan	A3583/L(-)44A		18/03/13
Design Guide (with amended page 20)		January 2014	01/04/14
Outline Construction Method Statement		Undated	06/06/13
Archaeological Written Scheme of Investigation		06/02/13	18/03/13
Site Walkover August-		October	14/03/14

<b>Table 2: Plans and Documents</b>			
<b>DRAWING/ DOCUMENT TITLE</b>	<b>DRAWING NUMBER</b>	<b>DATE ON PLAN/ DOCUMENT</b>	<b>DATES OF SUBMISSION (or date published on CNPA website)</b>
<b>September</b>		2013	
<b>Drainage Impact Assessment</b>		14/10/13	July 2014
Cover Letter from Halliday Fraser Munro Planning re. additional material for AMSC application		14/01/2015	January 2015
Road Layout Plan	007D	16/09/14	January 2015
Landscape Strategy Plan	216/P6E		January 2015
Supplementary Planning Support Statement – Affordable Housing Update		08/01/215	January 2015
Extent of Adoption	013/A	26/02/14	January 2015
Supplementary Planning Support Statement (Third Party Response)		17/12/14	January 2015
Supplementary Planning Support Statement (Consultee Response)		17/12/14	January 2015
Dalfaber infra-red camera survey 2014		November 2014	January 2015
Supplementary Planning Support Statement Consultee Request Summary		January 2015	January 2015
Visual Tree Assessment/Ground Level Tree Survey (2 documents)		September 2014	January 2015
Arboricultural Method Statement		October 2014	January 2015
Figure 2: The bat records for Dalfaber		12/11/14	January 2015
Figure 1: The bat transect route for Dalfaber		12/11/14	January 2015
Bat Transect Survey, Dalfaber		November 2014	January 2015
Supplementary Planning Support Statement Core		January 2015	January 2015

Table 2: Plans and Documents			
DRAWING/ DOCUMENT TITLE	DRAWING NUMBER	DATE ON PLAN/ DOCUMENT	DATES OF SUBMISSION (or date published on CNPA website)
Paths			
Detailed Woodland Planting Proposals South	216/P16	January 2015	January 2015
Detailed Woodland Planting Proposals Middle	216/P15	January 2015	January 2015
Detailed Woodland Planting Proposals North	216/P14	January 2015	January 2015
Maintenance and Management Areas	216/P13	December 2014	January 2015
Tree Protection Plan	216/P12	November 2014	January 2015
Arboricultural Implications Assessment Plan	216/P11	December 2014	January 2015
Tree Constraints Plan	216/P09	November 2014	January 2015
Tree Survey Plan	216/P08	November 2014	January 2015
Footpath Access Plan	216/P10	December 2014	January 2015
Non Adoptable Drainage Measures Maintenance Information	017	18/09/14	January 2015
Plan Showing Extent of Final Surface Course Completion	016	18/09/14	January 2015

13. For clarification, those documents in Table 2 identified by **red font**, were the subject of full consultation and neighbour notification by CNPA in April 2014. **Appendix 2** includes details of all plans and documents.

### RELEVANT PLANNING HISTORY

14. The relevant planning history is summarised in the February Planning Committee paper at **Appendix 3**. The Planning Committee resolved to refuse planning permission on the grounds that:

“...the Planning Permission in Principle to which the application for approval of matters specified in conditions relates (Ref: 07/0144/CP) is no longer capable of being implemented and has expired as a consequence of the failure of the applicants to apply for approval of all matters specified in conditions

(specifically the failure to apply for approval in relation to the siting, design and external appearance of all buildings and other structures including all fencing) within the timescales specified in Section 59(2) of the Town and Country Planning (Scotland) Act 1997.”

## **DEVELOPMENT PLAN CONTEXT**

### **National Policy**

15. Scottish Planning Policy (SPP) 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 applications that carries significant weight. The SPP promotes consistency in the application of policy across Scotland while allowing sufficient flexibility to reflect local circumstances.

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 place making. It contains policies and guidance on the design of new or existing streets and their construction, adoption and maintenance
- 4) Circulars, which contain policy on the implementation of legislation or procedures

## **STRATEGIC POLICIES**

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

16. The Cairngorms National Park Partnership Plan 2012 – 2017 is the management plan for the National Park for the next five years. It sets out the vision and overarching strategy for managing the Park and provides a strategic context for the Local Development Plan. Three long-term outcomes have been identified to deliver the vision for the Park, to continue the direction set out in the first National Park Plan and to together deliver the four aims of the National Park. The outcomes are:

- 1) A sustainable economy supporting thriving businesses and communities;
- 2) A special place for people and nature with natural and cultural heritage enhanced; and



- 3) People enjoying the park through outstanding visitor and learning experiences.
17. Policies to secure the outcome of a ‘special place for people and nature with natural and cultural heritage enhanced’ are also of relevance. Policy 2.8 seeks to enhance the design and sense of place in new development and existing settlements. The Plan sets out a number of means by which Policy 2.8 can be achieved, including enabling new development which contributes positively to a sense of place; promoting a high standard of sustainable design, energy efficiency, sustainably sources materials and construction in new development; and supporting the retention and enhancement of the local character.

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

18. All new development proposals require to be assessed in relation to policies contained in the adopted Local Development Plan. The full wording of policies relevant to the current application can be found on the CNPA website. Relevant policies are listed in the following table:

<b>Policy Number</b>	<b>Policy Title</b>
1	New Housing Development
2	Supporting Economic Growth
3	Sustainable Design
4	Natural Heritage 4.4 Protected Species 4.5 Other Biodiversity 4.6 All Development
5	Landscape
8	Sport and Recreation
9	Cultural Heritage
10	Resources 10.1 Water Resources 10.2 Flooding
11	Developer Contributions

**CONSULTATIONS**

19. CNPA undertook internal consultations with CNPA’s Ecology Officer, Landscape Officer, Outdoor Access Officer and Economic Development Manager. The full internal consultee responses are provided in **Appendix 4**.
20. On 4 September 2015, the Reporter started the external consultation process contacting Transport Scotland, SNH, SEPA, Scottish Water, Aviemore Community Council and third parties. The Reporter asked the CNPA to carry out internal consultations and with the relevant Highland Council officers and the information received has been used in the appraisal as reported below.

21. **CNPA Ecology Officer** advised that, further to previous requests for surveys and the receipt of a Site Walkover, they advised the applicants on 12 August 2014, that the following surveys were still required:

- (a) A bat survey of Dalfaber farm house – this was to include internal and external surveys of the building, followed by three dusk/dawn surveys
- (b) An otter survey
- (c) A water vole survey
- (d) A badger survey
- (e) A survey for the devil's bit scabious mining bee

22. Further submissions were made in January 2015, which included:

- (a) A bat transect survey – a bat activity survey of the site, using transects to detect bat activity across the site
- (b) A camera trap survey to detect the presence of badgers

No survey information was submitted for otters, water vole or the Devil's-bit Scabious mining bee.

#### Bats

23. Bats are a European Protected Species (EPS) and legislation requires that the impact on these species is assessed prior to determination and cannot be deferred by condition for future consideration. The previous survey for this site was conducted in 2007 and is no longer valid.

24. Whilst the transect survey was useful in highlighting that there are small numbers of common bat species using the site and foraging habitat is available, the survey as submitted is missing key elements to count as a roost assessment of Dalfaber Farm. It was not possible to make a definite assessment of numbers of bats entering/emerging from the building and from which points. No internal inspections were conducted.

#### Otters

25. Otters are also an EPS covered by the same legislative requirements. There are watercourses crossing the site and it lies within 200m of the River Spey, known to support otter. The previous survey for the north of the site was carried out in 2005 and is therefore obsolete.

#### Badgers

26. Burrows were originally identified in the Site Walkover in the north part of the site. Camera traps identified no badger activity. Therefore it can be confirmed that the proposed development is unlikely to impact upon this species.

Devil's-bit Scabious Mining Bee

27. This has been recorded by a local naturalist on the sites. This species is a Cairngorms Natural Action Plan species and is therefore a conservation priority within the Park. Their habitat – bare ground and devil's-bit scabious – is present on the site. No survey has been undertaken to confirm their existence. This is necessary to establish what, if any, mitigation is necessary.

Water Vole

28. Water vole burrows are protected under the Natural Environment (Scotland) Act 2004 and it is an offence to destroy a burrow or disturb a water vole while using its burrow. No survey has been undertaken to confirm their existing. This is necessary to establish what, if any, mitigation is necessary and to avoid any offence taking place.
29. **CNPA Landscape Officer** concludes that significant progress has been made in addressing a number of the matters previously raised in respect of the delivery of the conditions. Further information is required to:
- a) Clarify inconsistencies between drawings and reports as this could lead to misinterpretation/disputes further down the line
  - b) Provide the detail necessary to fully meet the conditions
  - c) Provide sufficient guidance to prospective plot-developers
  - d) Deliver a development that is of high quality and reflects the sensitivities and special qualities of the place.
30. **CNPA Outdoor Access Officer** advises that:

Condition 8

31. Both the Outline Construction Method Statement and Design Guide fail to address the requirements of Condition 8. It is evident that access will be impeded during the construction of the road but no detail has been provided to show how existing public access on the site will be managed during construction.

Condition 9

32. The plan has overcome previous concerns but still fails to provide a link onto Corrou Road or a link to core path LBS34 to the rear of plots 17 & 18. There is a link to the Fisherman's Carpark but suitable designs have not been provided.
33. No further details of the 'continued maintenance regime' have been submitted.

34. **CNPA Economic Development Manager** has concluded that as a result of the development there are three inherent potential benefits to the economy:
- a) Local construction industry – short to mid-term during the construction phase of the development
  - b) Local employers – through addressing the issue of shortage of appropriate affordable housing in the area
  - c) Local businesses – increase in demand for goods and services due to increase in local population.

Further economic activity could also be encouraged by ensuring provision of housing that has built-in flexibility for home-working and the necessary infrastructure for high-speed broadband connections. However, given that the environment is the key economic driver in the Park, any significant impacts of the development upon important habitats or iconic species, may have a long term impact on visitor numbers and tourism in the Cairngorms.

## **REPRESENTATIONS**

35. The Reporter is in receipt of all previous responses has now initiated further consultation.

## **APPRAISAL**

### **MATTER 3 RESPONSE**

#### **Principle**

36. The principle of the residential development of these two sites has already been approved by the Directorate for Planning and Environmental Appeals (DPEA) under appeals PPA – 01 – 2000 and PPA – 01 – 2001.
37. In making his decision to approve the original planning permission in principle, the Reporter considered all aspects of the proposal and attached conditions to control the details of the development. The only matters for consideration therefore relate to the submissions made by the applicant to discharge the conditions.
38. This report will only deal with those matters which can be considered in full or in part in the absence of consultations. To assist Members and to meet the requirements of the Reporter, this report is structured by Condition number(s). Each section will follow the same format:
- (1) What is required by the condition? (Reasons for conditions are provided in Appendix 1)
  - (2) Has it been provided?
  - (3) Is the information acceptable on its merits to warrant discharge of the condition?
  - (4) Conclusion

39. Assessments will be based on whether the information meets the terms of and the reason for the conditions and also based on the planning merits of the information provided (and the tests within Circular 4/1998).
40. It should be noted that the applicants refer in their submissions to the option of CNPA deferring some submissions for later consideration. However, it is considered that if an MSC condition expressly requires specific detail then this should have been submitted and cannot be deferred for later consideration because the terms of the condition have, by default, not been satisfied.

### **Natural Heritage**

41. Before appraising each condition in numerical order, there are some significant natural heritage issues for the site that are relevant to the CNPA's consideration of many of the conditions.
42. Policy 4 of the LDP seeks to ensure that development conserves and enhances the outstanding natural heritage of the Park. It requires applicants to undertake surveys for relevant habitats and species and if necessary, provide species/habitat protection plans to set out measures to avoid, reduce or mitigate adverse effects. The policy helps the planning authority and applicants comply with legislative requirements around the protection of European Protected Species, other protected species and wider biodiversity.
43. In these cases, the required survey work has not been submitted to support these MSC applications and therefore the Planning Authority or decision maker is unable to satisfy themselves that there is no adverse impact on a number of species and critically, of two European Protected Species. Surveys were originally submitted for bats and otters, 2007 and 2005 respectively, for the original planning applications 07/0144/CP and 04/0145/CP, but these surveys are now obsolete and cannot be used for the purpose of determining these MSC applications.

### **CONDITION I – PLANS AND PARTICULARS**

#### **Condition I:1 – Siting, Design and External Appearance**

What is required by the conditions?

44. Plans and particulars of the siting, design and external appearance of all buildings and other structures, including all fencing.
45. Taking each of aspect of this condition in turn, a reasonable planning definition would be:
  - a) Siting – the actual footprint of the buildings and other structures
  - b) Design – the actual shape/form of the buildings and other structures

- c) External Appearance – the actual detail and use of materials used on buildings and other structures.
46. The details that would therefore be required to be submitted would be as follows:
- (a) Scaled drawings showing the exact location and footprint of the houses and any other ancillary buildings and the line of the fencing/boundary treatment
  - (b) Scaled elevational and sectional drawings of each of all buildings on the site to show all materials to be used together with scaled elevational drawings of fencing (a standard section of fencing would be accepted if the same fencing is to be installed across the site).
47. Without these details being considered and approved at this stage in the planning process, there would be no ongoing control within planning of the built development. Buildings of any footprint, size, shape, design and using any materials could be built without these details being approved at MSC stage.

Have the details been provided?

48. The applicant advises that since the development may take place on a plot by plot basis, the Design Guide is intended to satisfy the requirements of this Condition. The CNPA does not accept this argument. The requirement to submit a Design Guide is a requirement under a separate condition (conditions 12/13) and is specifically required even where development takes place on a plot by plot basis. The CNPA does not consider the submission of the Design Guide as an application in relation to condition 1.1, but as an application for approval under conditions 12/13. A detailed consideration of the merits of the Design Guide is included in the consideration of Conditions 12/13 below.
49. On siting, the Design Guide only provides an indication of where buildings will be. It does not provide the detail of where buildings will be sited.
50. On design and external appearance, the information provided via the Design Guide is generic and attributed to three character areas, which are not identified on a plan. The condition refers to 'sample house type illustrations' but the Design Guide is narrative with unreferenced photographs of houses and buildings. The Design Guide does not provide detail of the actual design or external appearance of any proposed building.

Views on the merits

51. Policy 3: Sustainable Design, Policy 4: Natural Heritage, Policy 5: Landscape and Policy 10: Resources are all relevant for the purposes of assessing the merits of the details submitted in respect of Condition 1:1.

52. Given the absence of detail in relation to proposed buildings, it is not possible to ascertain whether the siting, design or external appearance of any building or other structure, is acceptable on its merits.
53. From an ecological aspect, the siting of any structures should not be determined until the necessary survey work, assessment of impacts and mitigation has been undertaken and considered.
54. From a landscape aspect, generally, the revised material show a planting layout around the indicative plots that would improve the landscape amenity, and in time provide tree cover that will relate to the character of the northern part of the site. However, the absence of detail relating to the design and external appearance of the houses, specifically in terms of height/mass and juxtaposition means that it is not possible to fully assess the landscape impact. The hedging proposed will not form an appropriate and manageable boundary.

#### Conclusion

55. **The proposed response to the Reporter is that the CNPA do not consider that an application has been made in relation to the MSC constituted by condition 1:1.** It is CNPA's position that the failure to provide this information within the required three year period has resulted in the lapsing of the original planning permission in principle. The details required, but not submitted, are fundamental to the development and should not be deferred for later consideration through the imposition of a further condition. As this is an MSC, there is no legal planning mechanism to discharge an MSC condition by way of approval and imposition of a further MSC condition for the submission of the missing details.

#### **Condition 1:2 – Location and Specification of all roadways and of paths**

##### What is required by the condition?

56. Plans and particulars of the location and specification of all roadways and of paths for the separate or combined use of pedestrians, cyclists, horse-riders and aids for the off-road movement of persons with physical disabilities. Conditions 8, 9 and 10 of both permissions also detail the requirements of Condition 1:2, which are outlined below.
57. Condition 8 requires that this should include a detailed plan of public access across the site (existing, during construction and upon completions).
58. Condition 9 requires the submission of a management and maintenance statement to be binding during development and occupation of the site. It should cover any play areas, hard or soft landscaped areas, roads, footpaths and cycle links that are not intended for adoption by Highland Council, including how the woodland and open space will be retained and managed in perpetuity.

59. Condition 10 requires detailed proposals for extension of the path along the golf course boundary to the northern end of the site and in detailed proposals for vehicle barriers at an emergency access point from Spey Avenue.

Have the details been provided?

60. A Footpath Access Plan referencing existing and core paths, the proposed path network and a '20s Plenty' shared access road has been submitted. The Proposed Landscape Strategy Plan shows the proposed paths and roads, with limited surface details or specifications. The extent of adoption of the roads together with details of the swales has been provided. The plans have no information regarding public access during construction. The applicant has advised that this needs to be conditioned since at this stage the phasing plan has not been approved and there is no construction programme in place.
61. A Maintenance and Management Areas Plan has been provided identifying the extent of individual feus (private ownership and maintenance responsibility), landscape open space (managed under factoring agreement) and those areas to be adopted by Highland Council (roads and drainage swales). The plans do not show the paths or any details relating to the retention or maintenance of them. The applicant advises that there are details in the Design Guide but the Design Guide does not refer to the paths.
62. The Supplementary Planning Support Statements refer to a Maintenance Report (in response to a request for detail on how the path network within the site will be maintained and by whom) and a Construction Practice Manual (in response to a request for detail on how access to and across the site on core paths will be managed during construction). Neither document has been submitted to CNPA for consideration and are not listed in the agreed list of submissions for Matter 1, already provided to the Reporter.
63. The Supplementary Planning Support Statements also state that the Roads Officer has taken into account a number of drawings including visibility plans. Those drawing have not been submitted to the CNPA and are not included in the agreed list of submissions for Matter 1.

Views on the merits?

64. Policy 3: Sustainable Design, Policy 4: Natural Heritage, Policy 5: Landscape and Policy 10: Resources are all relevant to the consideration of the details submitted to discharge Condition 1:2.
65. The CNPA considers the detail submitted does not meet the requirement of the conditions:
- a) No statement has been provided to identify how paths will link internally or externally;



- b) Although the locations of roads and paths are evident from the submitted plans, there is little detail on their specification;
  - c) No details of ongoing 'continued' maintenance has been provided;
  - d) No details relating to the diversion/retention of existing paths during construction has been provided;
  - e) Although the emergency access and bollards have been identified on the Roads plan, they are not shown on the Footpath Access Plan and no detail on specification or long term retention have been provided.
66. From an ecological viewpoint, the siting of these matters cannot be determined until the necessary survey work and mitigation has been respectively undertaken and considered.
67. From a landscape viewpoint, it is noted that footpath access along the eastern boundary as previously requested by the CNPA has not been provided. If there is to be no eastern periphery path then the views to the hills need to be kept open. The planting shown on the plans do not facilitate this.
68. From an outdoor access viewpoint, it is considered that the application remains deficient since access will clearly be impeded during the construction of the road but there is no indication how access will be affected and how this is to be managed. No details of any diversions are provided, as required. The plans are still deficient in that they do not provide the identified link onto Corroul Road or the link to LBS34 to the rear of plots 17 and 18. The link is provided to the Fisherman's car park but no details regarding accessibility are provided.

#### Conclusion

69. **The proposed response to the Reporter is that the details submitted to discharge Condition 1:2 are refused.** Although the January 2015 information submission has provided more detail, it does not meet what is required by the conditions. The applicant seeks to defer that detail for future approval. However, this is an application for the discharge of an MSC condition. As this is an MSC, there is no legal planning mechanism to discharge an MSC condition by way of approval and imposition of a further MSC condition for the submission of the missing details. The details required, but not submitted, are fundamental to the development.
70. The information provided does not allow the CNPA to conclude that the development will provide adequate access both during and after the development takes place, taking account of ecological and landscape sensitivities of the sites and their surroundings.
71. The views of consultees and neighbour notification are also essential to the full appraisal of this condition.

### **Condition 1:3 – Detailed Landscaping Plan**

#### What is required by conditions?

72. Plans and particulars of a detailed landscaping plan, including extensive peripheral tree planting and proposals to protect and maintain the scenic integrity of the site and provide wildlife corridors.
73. Condition 2, further requires the landscaping plan to be co-ordinated across the two sites and to include comprehensive details of all species including planting location and numbers to be planted etc.
74. Condition 4, requires that the detailed landscaping plan shall be accompanied by an Arboricultural Method Statement and a full Tree Protection Plan, which shall be prepared by an arboriculturist in accordance with BS 5837:2005.
75. Condition 9 (as detailed above under Condition 1:2) refers to the need for specific surfaces for the paths.
76. Condition 11 (of permission 07/0145/CP) requires that the details of landscaping shall include sufficient depth and density of trees on the eastern edges of the site, effectively to soften the visual impact of houses nearest to the boundary of the site with the Dalferberg golf course, including during seasons when the trees are of bare leaves.
77. Condition 12/13 requires a Design Guide to be submitted that includes landscape guidance.

#### Have the details been provided?

78. The January 2015 submission included tree surveys, tree protection plans and woodland planting plan. The applicant's Supplementary Planning Support Statement claims that the management and maintenance statement is a suspensive condition, which can be deferred and further conditions imposed. However, Condition 9 requires the statement shall be submitted with Condition 1, thereby making it an MSC requiring submission and approval.

#### Views on the merits

79. Policy 3: Sustainable Design, Policy 4: Natural Heritage, Policy 5: Landscape and Policy 10: Resources are all relevant to the assessment of the merits of the details submitted to discharge Condition 1:3.
80. The applicant has provided planting details including details of species, numbers, locations, heights and girths. However, the Design Guide was not updated at the same time to reflect those details creating confusion. For example, drawings 216/P14, P15 and P16 provide planting details but this is not reflected in the plot by plot detailed drawings in Annex I of the Design Guide. Inconsistencies in drawings/documents lead to problems when monitoring development and potential enforcement. The Design Guide

remains is ambiguous, as detailed below under Condition 12/13, which makes it difficult to assess the implication of the development upon the existing landscape and whether the proposed landscaping will provide mitigation.

81. From an ecological aspect, the location and specifications of planting cannot be determined until the necessary survey work and mitigation has been respectively undertaken and considered.
82. From a landscape perspective, there not enough detail on maintenance for the woodland and other open/shared areas. Although the factoring mechanism proposed is appropriate way of securing maintenance, it does not provide the detail required by the conditions, which seek to ensure that they will be retained and managed in perpetuity. A detailed Maintenance Plan was requested but has not been provided. This is essential to ensure the delivery of landscape and wildlife objectives and should include a description of the approach and details of all maintenance operations, including protection, weed control, replacement, thinning etc.
83. The differences between the January 2015 information and the content of the Design Guide need to be addressed in the Design Guide so that the Design Guide is consistent with the newly submitted plans. For example, new details on woodland edge planting mean that hedging around the 'overall site boundary' referred to on page 22 of the Design Guide is not considered necessary so should be removed to avoid confusion for developer and planning authority.

#### Conclusion

84. **The proposed response to the Reporter is that the details submitted to discharge Condition 1:3 are refused.** The CNPA considers the details submitted are inconsistent and lack detail for approval and for prospective house builders. The information provided does not allow the CNPA to conclude that the development will provide adequate landscaping, taking account of ecological and landscape sensitivities of the sites and their surroundings.
85. The inconsistencies in the detail and lack of detail could lead to monitoring and enforcement issues in the future. The CNPA do not consider that imposition of a further condition would overcome these issues and as this is an MSC, there is no legal planning mechanism to discharge an MSC condition by way of approval and imposition of a further MSC condition for the submission of the missing details. A new submission to discharge Condition 1:3 would be necessary.
86. The views of consultees and neighbour notifications are also essential to the full appraisal of this condition.

## Conditions I:4 – Surface Drainage

### What is required by the condition?

87. Plans and particulars of surface drainage of the site in accordance with Sustainable Urban Drainage Systems Principles (SUDS)
88. Condition 17/18 requires that a statement must be established in respect of any drainage measures that are not to be adopted by Highland Council or Scottish Water. Details of and evidence for the effectiveness of the maintenance proposals shall be submitted with the required details of SUDS.

### Have the details been provided?

89. A Drainage Impact Assessment together with details of Non Adoptable Drainage Measures Maintenance Information has been provided. A Management and Maintenance Statement has also been submitted for consideration. Contours are shown on the Proposed Landscape Strategy Plan.

### Views on the merits

90. Policy 3: Sustainable Design and Policy 10: Resources are relevant to the consideration of the details submitted to discharge Condition I:4.
91. The terms and reason for this condition relate to drainage and flooding issues. Without the consultation responses from the relevant agencies, SEPA, Scottish Water and the Highland Council Flood Team, it is not possible at this time to comment on the merits of these details.

### Conclusion

92. **The proposed response to the Reporter is that the CNPA is unable to form a view on Condition I:4 without having received and considered the response of SEPA, Scottish Water and the Highland Council Flood Team.**

## **CONDITION 11/12 - PHASING**

### What is required by the condition?

93. The conditions attached to the planning permissions require the developments to be carried out in phases, in conjunction with one another, with each phase being certified prior to the next phase, in a generally north to south direction. A phasing plan and details of the development method are also required, including the responsibility for the provision of infrastructure to serve the development.

Have the details been provided?

94. A plan detailing four phases, progressing in a south to north direction, has been provided. The applicant has confirmed that they are responsible for providing the infrastructure and this will be provided as a breakdown within each phase. It is assumed that a plot by plot approach is intended but this has not been confirmed.
95. The applicant states that it is not practical to comply with the north to south phasing terms of this condition. They propose that the phasing is carried out in a south to north direction to allow the required highway works and pumping station to be included at the start of the development. The applicant has put forward a different justification for the proposal to remove the north to south requirement in their Section 42 application appeals.

Views on the merits

96. It is necessary to assess the merits of the development progressing north to south or alternatively south to north. Given the one point of access, the impact upon existing residents would be similar in terms of disruption regardless of the direction of the development.
97. The CNPA considers that the disruption to new residents would be greater if the development was to take place from south to north. Residents will drive through a development site in the north to south phasing while construction traffic will drive through the residential area in a south to north phasing. Objections from existing residents have previously been raised regarding this aspect of the proposal also based on significant health and safety issues.
98. The costs to a developer of the north to south phasing are likely to be higher as the full road infrastructure needs to be created early in the development while it could be created in different stages for a south to north phasing.

Conclusion

99. **The proposed response to the Reporter is that the details submitted to discharge Conditions 11 and 12 are refused.** The CNPA considers that the proposed phasing plan is not acceptable due to (1) the fact that is in direct conflict with the requirements of the existing condition and (2) that the disruption to new residents would be greater if the development was to take place from south to north.
100. This view is given in the absence of any consultation responses from SEPA, Scottish Water, Highland Council Roads and Highland Council Floods Team.

## **CONDITION 12/13 – DESIGN GUIDE**

### What is required by the condition?

101. A detailed design statement is required which is to include design guidance (including sample house type illustrations where appropriate) and shall cover details of height, materials, plot ratio, boundary treatments, the incorporation of energy efficiency and sustainability measures, and landscape and ecology guidance.

### Have the details been provided?

102. A Design Guide has been provided. It includes information on each of the subject areas required in the conditions without specific details.

### Views on merits

103. As already established under Condition 1:1, the Design Guide is not sufficiently detailed to constitute an application for approval of the siting, design and external appearance of structures in the development.
104. As a guide for future house builders, the detail provided is ambiguous and lacks the clarity required to inform any future build. Character areas are identified but are not clarified on a plan to enable a future builder to clearly identify which guidance applies to which location. Regardless of which of the three character areas is appropriate, the guidance provided is vague with the result that there are almost unlimited options available for what can be built on the sites. The buildings can be of any height, any form, and with any features, using any material.
105. The conditions require the Design Guide to include ecology guidance. The approach of conditioning parts of the development or individual dwellings as they occur would be incoherent given the size and complexity of the site. The CNPA do not consider it possible to provide competent ecology guidance for a specific site without adequate surveys and, if required, Species/Habitat Protection Plans being submitted for consideration. That information could influence the content and direction of the ecology guidance and Design Guide. It is essential where European Protected Species may be affected by the development proposals.
106. The Design Guide has not been updated to reference or include details that were subsequently submitted in January 2015. Specifically details now shown in drawings 216 – P14, P15 and P16 are not incorporated into the Design Guide.
107. Earlier advice from the CNPA Heritage Team noted that while the Design Guide alludes to the creation of ponds and wetlands, it is simply a suggestion for individual house owners to consider so unlikely to be achieved. The guide could provide significantly more certainty and ecological benefit by careful

management of an existing boggy area within woodland that the developer does not propose to develop.

108. The Design Guide provides detail on the number and locations of trees highlighted for removal. The CNPA Heritage Team welcome the emphasis placed on the retention of both living and dead trees as a “main aim”. The intention to replant and replace lost trees with native species is also welcomed. Incorporating native willow into the tree planting and wider landscape planting scheme will also benefit invertebrates such as bumblebees and solitary bees as the flowers provide a valuable source of food in spring. The Design Guide includes a section on tree protection and makes reference to BS5837:2012 which is also welcomed.
109. The Design Guide suggests that some planned open areas, be left un-mown and not sown with lawn mix to allow for species rich grassland. The welcomes this idea as it has the potential to enhance the biodiversity of public areas within the development. However, no detail is provided as to where these areas are proposed, how they will be created and how they will be managed to maintain diversity. Officers in the CNPA Heritage Team have identified areas within the scheme as potential locations for species-rich grassland.

#### Conclusion

110. **The proposed response to the Reporter is that the details submitted to discharge Conditions 12 and 13 are refused.** The Design Guide does not provide certainty that a high quality sustainable housing development will be provided on these sites. It does provide clear design guidance for future house builders. The Guide contains information which is inconsistent with later submissions made by the applicant.
111. The views of consultees and neighbour notification are also essential to the full appraisal of this condition.

#### **CONDITIONS 14/15 – CONTOUR SITE PLAN**

##### What is required by the condition?

112. A plan is required indicating existing ground levels and all proposed finished floor levels shall be included in the detailed proposals for the site. No land raising, landscaping (bundling etc) or solid boundary fences or walls shall be carried out or put in place below the level of 208.55m AOD. Finished floor levels shall be set at least 600mm above the design water level i.e. at not less than 209.15m AOD. Any infiltration basin shall not be located below the 208.55 metre contour.

##### Have the details been provided?

113. A contour plan has been detailed on the Proposed Landscape Strategy Plan, 216/6E

Views on the merits

114. The terms and reason for this condition relate to drainage and flooding issues. Without the consultation responses from the relevant agencies, SEPA, Scottish Water and the Highland Council Flood Team, it is not possible at this time to comment on the merits of these details.

Conclusion

115. **The proposed response to the Reporter is that the CNPA is unable to form a view on Conditions 14 and 15 without having received and considered the responses of SEPA, Scottish Water and the Highland Council Flood Team.**

**CONDITION 16/17 – CONSTRUCTION METHOD STATEMENT (CMS)**

What is required by the conditions?

116. A detailed CMS is required and must address the temporary measures proposed to deal with surface water run-off during construction and prior to the operation of the final SUDS.

Have the details been provided?

117. A CMS has been provided, details of which are included in the Site Description and Development section of this report.

Views on the merits

118. Without the consultation responses from the relevant agencies, SEPA, Scottish Water and the Highland Council Flood Team, it is not possible at this time to comment on the merits of these details.

Conclusion

119. **The proposed response to the Reporter is that the CNPA is unable to form a view on Conditions 16 and 17 without having received and considered the responses of SEPA, Scottish Water and the Highland Council Flood Team.**

**CONDITION 19/20 – ARCHAEOLOGICAL PROGRAMME**

What is required by the condition?

120. A programme of archaeological work for the preservation and recording of any archaeological features affected by the proposed development, including a timetable for investigation.



Have the details been provided?

121. A programme of archaeological work has been submitted.

Views on merits

122. The programme was the subject of earlier consultation. At that stage, the Highland Council Archaeological Officer concluded that they were satisfied with the details submitted subject to a further condition (more or less replicating the original condition) being imposed. Our interpretation of that advice is that the original condition has not been discharged.

Conclusion

123. **The proposed response to the Reporter is that the details submitted to discharge Conditions 19 and 20 are refused.** The CNPA is unable to confirm this condition has been discharged while Highland Council's Archaeological advice is that the same programme of archaeological works be conditioned for further approval.

**OTHER MATTERS**

Affordable Housing

124. Officers have noted the later submission of an Affordable Housing Update. Conditions 21 and 22 require that the planning authority certify in writing its satisfaction with arrangements for provision of affordable housing. The information submitted does not satisfy either requirement of the conditions.
125. The applicant has not to date formally sought the discharge of either of these conditions under application 2013/0073/MSC or 2013/074/MSC so they cannot be considered under the registered applications.

**MATTER 4 RESPONSE**

126. The Reporter has asked the CNPA to provide any suggested conditions in the event that the Reporter is minded to approve any of the above conditions. This is a complicated requirement as it is within the Reporter's powers to approve one or all or any number of the applications for approval of conditions which have been made. The suggested conditions therefore need to take account of all those potential scenarios.
127. The task is complicated by the fact that the applicant has argued that they have made a submission in respect to Condition 1:1. However, no details of the siting, design and external appearance of the development have been submitted. The CNPA cannot suggest conditions applicable to this matter when there are no details on which to base them. The original condition remains cannot be discharged without them.

128. In the event that any of the conditions are not discharged at this stage then the wording of the relevant condition would remain unchanged. The CNPA does not consider it appropriate in determining these applications to issue permissions with newly worded conditions.
129. **Appendix 5** includes a list of suggested conditions for the Reporter in response to Matter 4. These conditions are conditions which CNPA would propose if planning permission in principle was being granted at this stage. They are therefore potentially relevant to the section 42 appeals but have limited relevance to the MSC appeals.

## RECOMMENDATION

**That this report should form the basis of the response to the procedure notice issued by DPEA**

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**September 2015**

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