
CAIRNGORMS NATIONAL PARK AUTHORITY

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

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

DEVELOPMENT PROPOSED: Application under Section 42 to vary Conditions 1, 12, 13 and 22 of consent PPA/001/2001 (07/94/OUTBS (07/0145CP)) at Land North West and South of Former Steadings, Dalfaber Farm, Dalfaber Drive, Aviemore

APPLICATION REFERENCE: 14/03675/S42
APPEAL REFERENCE: PPA – 270 – 2127

DEVELOPMENT PROPOSED: Application under Section 42 to vary Conditions 1, 11, 12 and 21 on permission reference PPA/001/2000 (07/93/OUTBS (07/0144/CP))

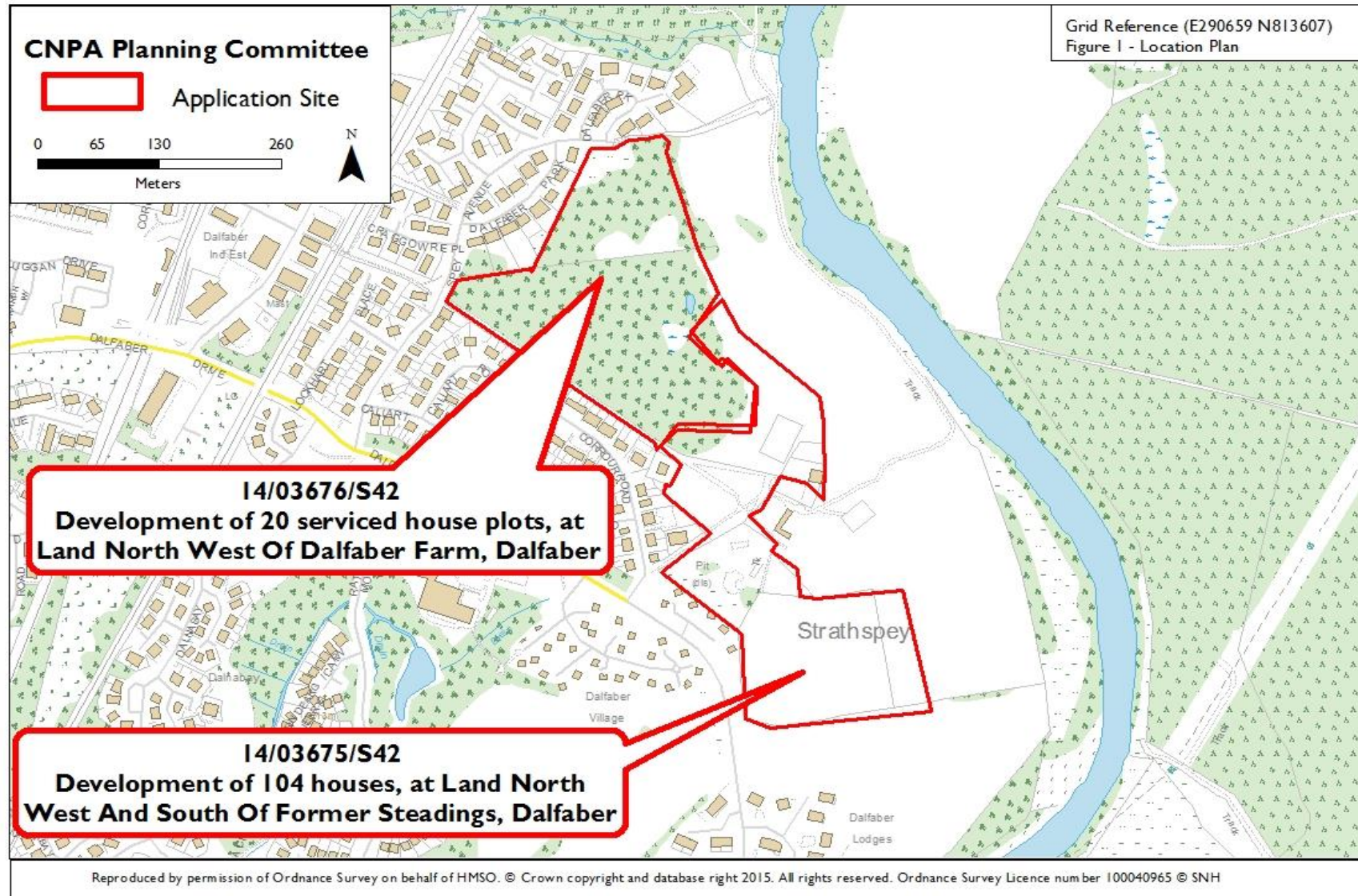
APPLICATION REFERENCE: 14/03676/S42
APPEAL REFERENCE: PPA – 270 – 2126

APPLICANT: REIDHAVEN ESTATES

DATE CALLED-IN: N/A

REASON FOR CALL IN: N/A

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



Location Plan

SITE DESCRIPTION AND PROPOSAL

1. Reference should be made to the paper at Planning Committee agenda item 9 for background information about the site description and planning history.
2. It should be noted that the applications are described by the applicant, and registered by Highland Council, as applications to ‘vary’ some of the conditions of the previous planning permissions. For the avoidance of doubt the applications should be considered as applications for planning permission for the same development as previously granted planning Permission in Principle, but with a different set of conditions. If the Section 42 applications are granted, they would give rise to two, new stand-alone permissions which are separate from the previous planning permissions. In the interests of brevity and consistency, various references are made in this report to ‘varying’ or ‘changing’ the conditions even though that is not a technically correct description.
3. The full references for the two sites are included in Table 1:

Site/Reference	Site 1: 10 serviced plots	Site 2: Up to 83 houses
Highland Council Applications	07/93/OUTBS	07/94/OUTBS
CNPA Applications	07/0144/CP	07/0145/CP
Original PPIP/Appeal Decisions	PPA – 001 – 2000	PPA – 001 – 2001
CNPA MSC Applications	2013/0073/MSC	2013/0074/MSC
CNPA Appeals	PPA – 001 – 2016	PPA – 001 – 2017
Highland Council S.42 Applications	14/03676/S42	14/03675/S42
S.42 Appeals	PPA – 270 – 2126	PPA – 270 – 2127

Table 1: References for applications and appeals

4. The drawings and documents associated with this application are listed in Table 2. The covering letter and Existing/Proposed Conditions document are both

copied as **Appendix I**. All documentation related to these applications is also available on the Highland Council website.

Title	Drawing Number	Date on Plan/ Document or Date on HC website
Application Form		25/09/14
Covering Letter (14/03675/S42)		25/09/2014
Existing/Proposed Conditions		25/09/2014
Location Plan	P1705/D (-01	10/09/2014
Location Plan	P1705/D (-02	01/03/2013

Table 2: Plans and documents

5. Full details of the proposals are outlined in the four page document (Existing and Proposed Conditions) as included in **Appendix I**. In summary:
 - a. the variations sought to Condition 1 and Conditions 12/13 seek to provide that in the event of a plot by plot development approach, further MSC applications would be required in relation to each plots;
 - b. the variation sought to Condition 11/12 seeks to delete the reference to the phasing plan, including a north to south direction; and
 - c. the variation sought to Condition 21/22 seeks to delete the reference to not less than 22 dwellings and insert 'number of dwellings not less than 25% of the total number of dwellings to be built'.

6. The applicant provides justification for this in their Covering Letter dated 25 September 2014 (included in full in **Appendix I**). They advise that the main motivation for seeking these changes stems from the processing of the MSC applications and the reasons are as follows:
 - a. Condition 1 & Conditions 12/13: There is an ambiguity in relation to Section 59 of the Acts concerning timing. There is no legal basis on which to submit future MSCs to deal with plot by plot applications to build individual houses. The change sought makes it clear that further applications would not be barred under Section 59 of the Act.
 - b. Condition 11/12: Concern that in submitting the phasing plan under the MSC that this did not allow for an alternative to the north to south phasing outlined in the conditions. Phasing from north to south would raise significant health and safety issues. Starting construction from the south, close to the public road, means that new residents and potential purchasers do not have to travel through a building site. The disruption of construction works to existing residents would move away from the south.

- c. Condition 21/22: The variation seeks to replace a precise numeric requirement with a percentage requirement in line with the new SPP (2014). This takes into account the reduced number of units from the original permission.

BACKGROUND

7. These applications were not called in by CNPA. Section 42 applications can only be made while the previous planning permissions to which they are based on are still live. CNPA considered that Appeal Decisions PPA – 01 – 2000 and PPA – 01 – 2001 had lapsed due to fact that not all the applications for Matters Specified in Conditions had been submitted within the required period.
8. As a consequence, CNPA considered that the Section 42 applications were not competent and should not have been validated. It was considered inappropriate for CNPA to call in such applications since it may have prejudiced its position regarding the status of these permissions and the MSC applications which were then pending. The appellants dispute CNPA's view that the previous planning permissions have lapsed and the effect of lapsing on their ability to make valid Section 42 applications.
9. Consultation and neighbour notification on these applications was undertaken by Highland Council. Copies of all the responses are included in **Appendix 2 and 3**.
10. The applicant, following the non-determination of these applications by Highland Council, has appealed to the DPEA. The Reporter has issued a Procedure Notice requiring CNPA, The Highland Council and the appellants to provide:
 - (a) Matter 1 – Views on the merits of the applications
 - (b) Matter 2 - Further conditions and planning obligations
11. CNPA have agreed an extension of timescale to 25 September 2015 to allow the Planning Committee to form its views for submission. Highland Council considered this matter at their meeting on Tuesday 18 August. A copy of their report together with a copy of their formal response to the Reporter is also included as **Appendix 4**. A copy of the appellant's comments on the Highland Council response is also included in **Appendix 4**.
12. The information requested by the Reporter is made on the premise that the Section 42 applications are valid and this Report proceeds on that basis. The Reporter will, however, need to determine the validity issue prior to determining the Section 42 appeals. The CNPA have also now been given an opportunity to comment on the validity issue and will do so by way of a written submission, based on the information presented to Committee in February 2015, which will accompany CNPA's response to the Procedure Notice.
13. Therefore the purpose of this report is to provide Members with the details of those applications and an appraisal of those details submitted, having assessed them against the Local Development Plan and any other material considerations,

to enable views to be provided to the Reporter to meet the terms of the Procedure Notice.

DEVELOPMENT PLAN CONTEXT

National policy

14. **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 decisions that carries significant weight. The SPP promotes consistency in the application of policy across Scotland while allowing sufficient flexibility to reflect local circumstances.
15. 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.
16. Scottish Planning Policy seeks to support business and employment and to facilitate sustainable economic growth.

Strategic Policies

Cairngorms National Park Partnership Plan (2012-2017)

17. The Cairngorms National Park Partnership 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.
18. Three long term outcomes for the Park are set out as follows:
 - 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.

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.

Cairngorms National Park Local Development Plan (2015)

19. All new development proposals require to be assessed in relation to policies contained in the adopted Local Development Plan (LDP). The full wording of policies can be found on CNPA website.
20. The application sites lie within the settlement boundaries of Aviemore. Key planning policies related to the proposals are summarised in Table 3.

Table 3: CNP Local Development Plan Policies	
Policy Number	Policy Title
1	New Housing Development
2	Supporting Economic Growth
3	Sustainable Design
4	Natural Heritage
5	Landscape
8	Sport and Recreation
9	Cultural Heritage
10	Resources
11	Developer Contributions

CONSULTATIONS

21. All consultation responses are included in **Appendix 2**. A summary of the responses are as follows:
22. **Transport Scotland** raises no objections.
23. **SEPA** have advised that they have no objection to these applications in terms of flood risk.
24. **SNH** have advised that they do not intend to offer formal comment on these proposals as they falls below our threshold for consultation as outlined in their Service Statement for Planning and Development.

25. **Highland Council Historic Environment Team** have advised that they have no comment as the applications do not seek to vary conditions which relate to historic environment matters.
26. **Highland Council Contaminated Land Team** has no comments to make.
27. **Highland Council Housing Team** - The Planning Gain Negotiator has confirmed discussions with the Housing Development Manager and responded on their behalf. She has advised that there is no issue with the change so long as the units are provided on-site.
28. **Aviemore and Vicinity Community Council** have raised objections to the applications based on legal grounds. Notwithstanding this, AVCC have also commented on the variations. With regard to the variation to Condition 1 sought, they cannot see where the ambiguity arises. They consider the present conditions are clear and unambiguous and do not need to be changed. To do so would lead to a piecemeal approach to the development. With regard to Condition 11/12, they consider that the changing the phasing would result in more significant health and safety issues. With regard to Conditions 12/13, they do not see any ambiguity and that the present conditions are clear and unambiguous and do not need changed.

REPRESENTATIONS

29. It is noted from the Highland Council report that objections have been received from 10 persons/bodies. All these letters are included in **Appendix 3**. Of particular note are the legal issues raised within the letter from Burness Paull, which raises similar legal issues to those highlighted by CNPA on the status of these Section 42 applications. In summary, the main issues raised within the representations are:

Legal Issues

- a) The planning applications have lapsed with the MSC applications not having been submitted within the required timescale. There is no ambiguity in the legislation with regard to timings under Section 59 of the Act. These applications are therefore not competent and it is questioned why they were validated by Highland Council, contrary to the advice given by CNPA. To approve these variations would leave the consents open to challenge in the Court of Session.
- b) The approach to vary conditions 1 and 12/13 is flawed. No detail is given on the proposed deadlines for submitting further MSC applications on the plot by plot basis and suggestion that provided a start is made then these can be submitted at any time in the future – this is contrary to the legislation relating to MSCs, which should be submitted within a specified period, thus providing certainty. The Reporter did not specify different deadlines for submission of MSC for different phases of the development and therefore the Reporter clearly envisaged that all MSC approvals would be sought within the three year period.
- c) The applications also fail the tests of Circular 4/1998 on the basis that the wording is vague and as such unenforceable.

- d) If allowed, it would not be possible to ascertain the deadline by when MSC for different parts of the site require to be submitted. The applicants need to apply for new permissions for the development. No justification has been given for altering the statutory period for MSC.

Principle

- e) Do not consider that there has been a change in circumstances warranting the varying of the conditions.
- f) Variations to these conditions would add further to the complexity of the planning situation for these two sites.

Ecology

- g) There are special features of natural heritage that have not been adequately taken account of – the habitats for the small scabious mining bee, which is on the Cairngorms Nature Action Plan 2013 shortlist and the Scottish Biodiversity List
- h) Loss of natural habitat and areas for recreation.

Phasing

- i) Allowing these variations will lead to the fragmented approach to construction and prolonged construction works on the site to the detriment of local residents and new residents of the development in terms of disturbance, disruption and safety
- j) Impact upon walkers and their safety using existing paths during construction.
- k) With regard to the variation to phasing, it is advised that planning permission is about protecting an area and for a community in terms of disturbance, health and safety. It is not about easing the burden for developers

Affordable Housing

- l) The method of calculation for provision of affordable housing does not need to be altered. The previous figure was acceptable to both parties at the previous appeal. Concern that if there are less houses built then the percentage approach will result in a smaller number than 22.
- m) The piecemeal approach may result in affordable housing not being provided.

Other

- n) The double hammerhead shown on the plan should be replaced with a turning circle. There are concerns that the use of a hammerhead may result in further road extensions. The proposals previously accepted were to be a compromise between environmental benefits of the area and the desires of the developers
- o) Impact upon the golf course in terms of the potential impact outlined by the Reporter and then need to soften the visual impact of any houses nearest the boundary of the site, including during seasons when the trees are bare of leaves
- p) Whether the development is necessary – there are other sites available.
- q) The Spey Valley Golf Club is entitled to know within a specified period what development is to be constructed, and when, along the boundary to allow them to plan for investment in the course.

APPRAISAL

Principle

30. It is important to note that in relation to the consideration of these applications, a planning authority's role is not merely to approve or reject the proposed new conditions. Section 42 allows a planning authority to grant the new permission subject to other conditions (provided such other conditions are supported by policy and law in the usual way). This is therefore an opportunity for CNPA to consider and make suggestions in relation to all the conditions to which the permission, if granted, should be subject to. In this specific case the final decision regarding what conditions are necessary will be for the Reporter to make.
31. In issuing new permissions, of particular concern is the lack of ecological information to demonstrate the impact of this development upon protected species; namely bats, otters, water vole and devil's bit scabious mining bee. Of these, bats and otters are identified and protected as European Protected Species under the Habitats Directive and the Habitats Regulations 1994.
32. In these cases, up-to-date survey work has not been provided and therefore the Planning Authority is unable to satisfy itself in relation to these issues. Surveys were originally provided in 2007 and 2005 for bats and otters respectively. These surveys are now out of date and obsolete.
33. In dealing with the MSC applications (Item 9 on Committee agenda), officers sought information to confirm that there would be no impact upon these species through the submission of surveys and a Species Protection Plan. To date this information has not been submitted to the satisfaction of officers. It is recommended that this situation is highlighted to the Reporter
34. Notwithstanding the above ecological issues, it is acknowledged that the principle of developing these two sites to provide housing has already established by way of the previous planning permissions.
35. It is also of relevance, that the variations to these conditions should also be assessed against Circular 4/1998 (The Use of Conditions in Planning Permissions), which requires conditions imposed on planning permissions to meet the following six tests:
 - a) Necessary
 - b) Relevant to planning
 - c) Relevance to the development to be
 - d) Enforceable
 - e) Precise
 - f) Reasonable in all other respects

Condition 1 and Conditions 12/13 (Plot by Plot approach)

36. The proposed varied conditions are intended by the appellant to remove any ambiguity in the wording of the conditions in the previous permissions (as to whether in the event of the site being developed on a plot by plot basis there is a requirement for an MSC application in relation to the siting, design and external appearance of the buildings to be constructed on each plot). The appellants contend there is no such requirement. Officers consider that the wording of the previous permissions is unambiguous and that, even in a plot by plot development, there is a requirement for an MSC application for each plot. This issue is addressed through consideration of the MSC appeals.
37. Based on the explanatory text to Condition 1, officers understand that the intention is to secure the submission of individual MSC applications for each plot as they come forward for development. If the officer's understanding is correct, such a proposed change would in principle be acceptable (and is in fact consistent with CNPA's interpretation of the existing condition).
38. However, the wording of the proposed condition does not fully reflect officers understanding of its intention. It is considered that the proposed condition could in fact result in further ambiguity. In particular, it is not clear whether the details of siting, design and external appearance are to be submitted by way of further MSCs or by separate individual full planning applications for each house under the plot by plot approach.
39. A further concern is that it is not clear what time period would apply to the submission for these individual MSCs and how this would relate in timing for the provision of essential infrastructure. The fact that the proposed wording is unclear means that the proposed condition fails the tests of Circular 4/1998.
40. If these Section 42s were to be approved and the Reporter issues a new planning permission, the default position is that the new permission would allow three years from the date of the grant of that permission for all the MSCs to be applied for. However, the Reporter can make a direction reducing or increasing that default periods. Since the purpose of Section 42 applications is not to extend the time period, many local authorities will make a direction requiring the period for the new permission be equivalent to the remaining term of the original permission. Such an approach means that the conditions would be 'changed' but the overall length of the permission has not been extended. Clearly this is not possible since the three year period has expired already.
41. If the Reporter were to issue a new planning permission, they will need to carefully consider this issue and define an appropriate timescale. The practicalities and potential time of applying for up to 93 individual MSC applications, including the need to submit up-to-date ecological information (particularly for European Protected Species) are relevant considerations. Officers consider that a three-year period would be appropriate.

42. In summary, while a requirement for an MSC application in relation to the siting, design and external appearance in relation to each plot is acceptable in principle, the variation sought to the condition is not acceptable. It would result in further confusion over how the planning authority can legitimately secure full details of the housing to be built.
43. **The proposed response to the Reporter is that this variation should be refused.** However, as required under Matter 2 of the Procedure Note, officers have redrafted the wording of the majority of the conditions to ensure compliance with Section 59 of the Act and Circular 4/1998. Amended conditions are therefore attached as **Appendix 5**.

Condition 11/12 (Phasing)

44. The current conditions require the provision of a phasing plan for approval and required that 'Phasing shall be undertaken generally in a north to south direction'. The conditions also require the developments to be carried in conjunction with one another, with each phase being certified prior to the next phase. The reason given was 'To ensure an orderly sequence of development.'
45. Under the MSC applications, the applicant put forward the argument that they would like to change the phasing to allow the highway works and pumping station to be included at the start of the development. The justification given with this application was that in their experience: (1) building work gradually works away from the public road; (2) This approach minimises the number of journeys made by visitors or new residents through an operational site, with the associated risks; (3) The convention is to segregate the public from the construction site.
46. In proposing the removal of the existing north to south stipulation, the appellant opening up the options available. It could be argued that no matter what phasing is proposed, providing each is signed off and agreed by the authorising planning authority, it will be, by definition, in an orderly sequence. That said, the MSC applications include a phasing plan that shows a four phases, working generally from south to north.
47. It is reasonable for a development of this scale to require phasing, with particular reference to ensuring that the infrastructure is in place at the right time to serve each element of the development. It is noted that objections have been raised regarding this aspect of the proposal, based on significant health and safety issues.
48. In view of the fact that the justification put forward by the appellants for this change points to a south to north phasing programme, it is therefore appropriate 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. If the development takes place north to south then the full road needs to be constructed prior to any houses being built and the development would work back towards the access point. If the

development is phased from south to north then the road only needs to be constructed for that part of the development. If the development takes place north to south, those living in the north part of the development would have to drive through the ongoing construction to access/leave. However, construction traffic (houses and road/infrastructure) would have to drive through the new housing built in the south if the development was to be constructed south to north. Overall, it is considered that the disruption to new residents would be greater if the development was to take place from south to north.

49. In conclusion, it is considered that the proposed amended conditions are unacceptable due to the adverse impact of a south to north development programme, which the proposed change may facilitate, would have on new residents.
50. **The proposed response to the Reporter is that this variation should be refused.** However, as required under Matter 2 of the Procedure Note, officers have re-drafted the wording of the majority of the conditions to ensure compliance with Circular 4/1998. Amended conditions are therefore attached as **Appendix 5**.

Condition 21/22 (Affordable Housing)

51. In preparing this report, officers have not had the benefit of a direct input from the Housing Team at Highland Council. Officers have been advised by Highland Council that a verbal response was given by the Planning Gain Officer advising that, following discussions with the Housing Officer, there was no objection.
52. Policy I.4 of the LDP states that the level of affordable housing required as a contribution on developments of four or more open market dwellings will generally be no more than 25% of the total number of units. It is noted that discussions took place at the Highland Council meeting which alluded to the affordable housing being only applied to the proposed housing on the south of the site (i.e. the 83 houses) and not for the 10 'serviced plots' on the north of the site. For clarification, this is not the case under current policy on affordable housing provision. Whether the houses are 'serviced plots' or housing, they all qualify for the purposes of assessing the provision of affordable housing.
53. The current condition requires not less than 22 dwellings to be provided to a social landlord. This figure was arrived at during the consideration of the previous appeals, and represented a reduction from the 26 dwellings previous sought by CNPA.
54. The number of dwellings proposed under the MSC applications is currently 10 houses (2013/0073/MSC) and 66 houses (2013/0074/MSC): a total of 76 houses and therefore the provision of affordable housing would be 19 houses under the revised terms proposed by the applicant
55. Whilst it is agreed that the number expressed as a percentage is more appropriate, and broadly complies with current LDP policy, it is considered that the proposed wording is too vague since the percentage relates to the 'total

number of dwellings to be built'. The percentage should be based on the number of dwellings granted planning permission.

56. The fact that there is more than one interpretation possible demonstrates that the condition does not meet the tests of Circular 4/1998 in providing certainty. As such the condition is unenforceable. If the development does not provide the requisite level of affordable housing based on current planning policy then it is unacceptable.
57. Based on the officer's interpretation of the proposed wording of Conditions 21/22, the number of dwellings to be built may change over time as a result of the plot by plot approach. The overall number remains undetermined; the previous permissions gave a 'not more than' and indicated that given the sensitivity of the site in terms of the need for additional landscaping the number may be less but without defining this. The MSC applications proposed a defined number but these proposals may not be granted permission by the Reporter; thereby reverting back to the PPIPs.
58. The plot by plot approach already provides a level of uncertainty as it appears to promote the ongoing submission of MSCs, and the time limit is currently unclear. The applicant's proposed changes to the condition do not provide certainty about the number of affordable units to be provided, nor the point at which they would be passed to a social landlord.
59. In addition, we consider the explicit reference to affordable housing provided by a social landlord may be too restrictive. Affordable housing can be provided through a variety of other mechanisms and we recommend that current planning policy is referred to. An appropriately worded condition is included in **Appendix 5**.
60. Finally, given the uncertainty around this condition and the difficulty in it meeting the tests of Circular 4/1998, we recommended that the provision of affordable housing is secured through a Section 75 Agreement.
61. **The proposed response to the Reporter is that this variation should be refused.** However, as required under Matter 2 of the Procedure Note, officers have re-drafted the wording of the majority of the conditions to ensure compliance with Circular 4/1998. Amended conditions are therefore attached as **Appendix 5**.

Other Conditions

62. It is recommended that CNPA take the opportunity to consider all other conditions as to whether they comply with Circular 14/1998, whether they comply with current planning policy and whether they are fit for purpose within newly issued planning permissions, should the Reporter approve some or all of the variations sought by the appellant.

63. To this end, a full appraisal of the conditions has been undertaken and many of the conditions have been re-drafted. These are included in **Appendix 5**. Table 4 has been included here to clarify how these relate to the original conditions:

Table 4: Suggested Conditions (Cross Reference to original PPIPs)			
Condition Number – PPA - 001-2001 CNPA Ref: 07/0145/CP (83 houses)	Condition Number – PPA – 001 – 2000 CNPA Ref: 07/0144/CP (10 Houses)	Suggested Conditions (83 houses)	Suggested Conditions (10 houses)
1	1	1, 2, 3, 4, 6, 7, 8, 10	1, 2, 3, 4, 6, 7, 8, 10
2	2	7	7
3	3	7	7
4	4	7	7
5	5	7	7
6	6	19	19
7	7	20	20
8	8	6	6
9	9	8	8
10	10	6	6
11	n/a	7	n/a
12	11	11	11
13	12	5	5
14	13	5	5
15	14	3	3
16	15	10	10
17	16	10	10
18	17	10	10
19	18	21	21
20	19	12	12
21	20	17	17
22	21	9	9
23	n/a	23	n/a
n/a	n/a	13	13
n/a	n/a	14	14
n/a	n/a	15	15
n/a	n/a	16	16
n/a	n/a	18	18
n/a	n/a	22	22

64. The rationale behind the changes to the condition is to simplify and identify the MSCs requiring submission and the relevant timescales. All those conditions requiring discharge prior to commencement are included first. Given CNPA's position on the MSCs and therefore the assumption that the permissions have lapsed, the detail required has been taken back to the issue of the PPIP as a base point (i.e. not based on any submissions that may have been subsequently been

made to discharge the originally worded conditions through the MSC applications). However, the requirements have also taken account of consultation responses since they are more current. Whilst this might seem unusual, it is considered that by making the conditions clearer and to include as much detail as possible under the PPIP, if the appellant then submits such detail in full, this will speed up consideration of such submissions and potentially the delivery of housing on this site.

Planning Obligations

65. Matter FWS 2 of the Procedure Notice seeks CNPA's view as to whether any planning obligations should be entered into in connection with the Section 42 applications.
66. For the reasons given above it is recommended that it would be appropriate for the developers to enter into a planning obligation agreement with both CNPA and Highland Council to ensure delivery of affordable housing.
67. Condition 20/21 of the original PPIPs is a negative suspensive condition in relation to off-site infrastructure. The Appellants, CNPA and Highland Council entered into an Agreement under Section 69 of the Local Government (Scotland) Act 1973 to secure the delivery of the road improvement works to Dalfaber Drive/Grampian Road covered by condition 20(b) of 07/144/CP (PPA-001-200) and condition 21(b) of 07/145/CP (PPA-001-2001). It is recommended that the Appellants, CNPA and Highland Council enter into a supplementary agreement such that the Section 69 Agreement applies to both the original PPIPs and any new planning permissions granted pursuant to the Section 42 applications.

RECOMMENDATION

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

Officer Name: Jane Shepherd

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Date: 27 August 2015

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.