

64. This local plan is an interim plan as is shown, for example, by the following:

- a) Paragraph 1.16 in the proposed modifications implies that this deposit local plan is part of work in progress, a transition to the Local Development Plan to be made under the new legislation;
- b) The Reporters for example in their paragraphs 24.37, 24.48 and 24.49 have made fundamental criticisms of the Park Authority's approach to affordable housing and the Park Authority in paragraph 1.5 on page 133 of its response have accepted the need to review its approach for future local development plans and this response is reflected also for instance in paragraph 1.12 on page 135 of the Authority's response and in paragraph 1.14 on the following page 136;
- c) The Reporters, in their paragraph 24.19, say "We recognise also the need for an interim solution to be incorporated within this local plan to provide at least some additional affordable housing";
- d) The Reporters in their paragraph 7.27 and elsewhere lament that no clear vision for any settlement has been articulated by the Park Authority as an integral part of the local plan and at their paragraph 48.44 said that a vision for Ballater should preface the proposals map for Ballater but the Park Authority in paragraph 1.10 on page 46 and paragraph 1.4 on page 231 of their response to the Reporters' recommendations rejected the idea of including any such vision for Ballater or any settlement but said that development of a vision will form an integral part of the "stakeholder engagement" on the Local Development Plan which is to supersede this deposit local plan;
- e) The Reporters for example in their paragraph 7.28 criticise the local plan for not being proactive in identifying sites and say that the allocations made to strategic and intermediate settlements are "with minor exceptions, those in the extant adopted local plans with rural settlements left to rely solely on windfall sites" and as indicated below in paragraph 65a) appear to have been misled as to the provision in the current adopted local plan for Ballater.
- f) The letter of 6th December 2004 from Mr Dowell, principal planner for the Scottish Executive, to the Park Authority's Head of Planning (CD8.11) recorded that it was the Authority's intention to prepare a local plan in the interim" before the system of local development plans was introduced to replace structure plans and local plans and that this local plan "would be taken to the deposit stage"

65. The allocation of 90 dwellings to Ballater for the life of this local plan is not appropriate to an interim solution for amongst other reasons the following:

- a) The allocation is not an allocation in the extant adopted local plan, the Aberdeenshire Local Plan of 2006 (CD6.5) since according to that plan the land that is now Ballater H1 merely includes an undefined area classified as an area of search for the period beyond 2010, as can be seen from the map on page 306 of that local plan, the glossary on page 340 and paragraph 8 on page 107 of that local plan, which indicates that it is an area of search to contribute to the indicative structure plan housing distribution from January 2011 to December 2015 (and as shown in paragraphs 58 to 61 above of these objections that distribution would not allow for anything like as many as 90 houses at Ballater);
- b) The allocation of 90 dwellings or 190 (whichever it is) to Ballater for the period to 2016 may prejudice and be inconsistent with a long term sustainable strategy for the settlement yet to be drawn up in accordance with the government policy referred to at paragraph 4 of these objections, and would limit the vision for Ballater which was recommended by the Reporters to be devised for inclusion in this plan but which the National Park Authority has postponed to the new local Development Plan (as indicated in paragraphs 5, 6 and especially 64d) of these objections) and about which more details and arguments are, contained in my objections to the new text of the proposals for Ballater, on which I rely also for this objection.
- c) The allocation of 90 dwellings to Ballater for the period to 2016 with or without the prospect of at least another 100 thereafter would be likely to impede or hinder some of the methods of providing affordable housing which a long term effective strategy for affordable housing might adopt since the 90 or more dwellings would for instance use resources relating to infrastructure and reduce the incentive on landowners and developers to provide small sites wholly or mainly for affordable housing.

Brief summary of key issues

The objector raises detailed points regarding housing land supply. In brief summary the key issues raised are

- objection to the CNPA failure to accept the Reporters recommendations regarding housing land supply
- the need for housing in the Park as a whole, in different housing market areas, and settlements and how the allocations meet this need
- the need for a vision and strategy for growth for the Local Plan in planning terms, and for settlements to guide

allocations

- the need for affordable housing as opposed to open market housing
- the requirement for different sectors of the market including different sectors within the affordable sector
- the baseline figure of need
- the commissioned work to establish the housing land requirement
- the link between allocation of land and the National Park
- the effectiveness of the land identified
- the link between the allocations and how they actually meet the projected need
- the way in which the Local Plan complies (or not) with the Structure Plan
- the interim nature of the Plan
- detailed objections to tables 1-4
- the need for Ballater H1 to meet the local need

CNPA analysis and response

The objector raises a number of detailed points regarding the projected need for housing, the housing land supply information included in the Plan as Park wide and housing market area information including tables 1-4, the needs of individual settlements, the way in which the land allocated meets the need for affordable housing, and the approach which is considered to be contrary to the Structure Plan. They go on to focus their arguments on the Ballater H1 allocation, and the need for this to meet the local need.

The matter of housing land supply and the relationship of the Plan with the Structure Plans was previously considered by the Reporters during the Local Plan Inquiry. CNPA has set out its assessment of the Reporters recommendations and has revised its housing land supply information to address these. Tables 1-4 set out the most up to date information from the published Local Authority Housing Land Audits. The wording and figures included in the published document reflects the current published effective housing land supply and also the findings of the Reporter in regard to the commissioned study on by the University of Manchester.

In regard to Ballater H1, the modification made is in accordance with the Reporters Recommendations and takes on board their suggested wording which is based on their assessment of all the issues affecting this site.

The matters raised were previously considered by the Reporters during the Local Plan Inquiry. Following consideration of the evidence presented at the Inquiry the Reporters did not recommend the changes sought by the objector. The objections raise no new planning issues and there is no material change in circumstances to warrant either reference to a further Local Plan Inquiry or modification to the plan, or proposals for Ballater as published.

CNPA decision - no change. Do not refer the objection to a second Local Plan Inquiry.

Objector Ref Bill McDermott

Agent

434t

Scottish Campaign for National Parks

Modified Policy/Proposal ref Housing section of the Plan and An Camas Mor

Response to Post Inquiry Modifications

Preamble

The SCNP's primary aim is to promote the protection, enhancement and enjoyment of nationally outstanding areas that are National Parks, or are appropriate to be designated as such, or are of sufficient merit to warrant special protection. This is manifest in our support for good stewardship of the country's best environmental assets and encouragement of environmentally sustainable methods of development, particularly within areas of national park potential. SCNP is a recognized Scottish Charity.

It is with the greatest disappointment that SCNP finds itself in the position of having to continue its objections to elements of the Cairngorms National Park Local Plan. Our concern remains the issue of the National Park's approach to housing within the designated area.

Context

In May and June of 2009 there was a public local inquiry into the Local Plan which, amongst other things, aired the whole problem of the Park Authority's approach to housing. There can be little doubt that the view put forward by SCNP and other objectors convinced the two Reporters that the Local Plan did not address the issue in a realistic way. We have rarely read Reporters' findings on a Local Plan which were so clear and critical of the approach adopted by the Local Plan authority.

It is only an accident of timing which allows the Park Authority to retain the discretion on whether or not to accept the Reporters' findings and recommendations. Had the public local inquiry been held a couple of months later under the new regulations, the Park Authority would have been obliged to accept the Reporters' recommendations which is clearly Parliament's intention as the right way forward for future local plan enquiries. However, because the inquiry was held under the old regulations, the Park Authority has the discretion to pick those recommendations that suit them and reject others. We believe there is strong moral obligation on the Park Authority to accept the Reporters' recommendations otherwise the public inquiry and public consultation processes can rightly be considered to be meaningless which does the reputation of the Park Authority no credit whatsoever.

The policy on housing

All the research and investigation of housing needs in the park made it clear that the real need was for affordable and local needs housing and that there was no rational justification for open market speculative housing in the park. The Reporters' examination of the housing analysis in the local plan was so damning (pages 26 - 36 paras. 7.1 to 7.37 of their report) that they recommended that substantial sections of this part of the plan should be replaced in a manner which complies with the requirements of the then SPP3 and the terms of CNPP 2007.

An Camas Mor.

This then leads to consideration of An Camas Mor. This is set out in pages 185 to 197 of the Reporters' report on the local plan. The Reporters could find no link between the Cairngorms National Park Plan 2007 and the proposals for An Camas Mor and concluded that because of the housing land position and the considerable uncertainty that they had found, especially about environmental issues and the lack of an appropriate assessment, that they could not endorse the proposal for a new settlement. It was at this point in paragraph 42.44 of their report that we feel that the Reporters lost their nerve and gave the Park Authority a get out clause if they chose to take it.

Conclusion.

In the absence of sound information on housing requirements, and a reliance on the open market housing as the vehicle to securing affordable and local needs housing, SCNP considers that the local plan housing policies are not fit for purpose and are in direct contradiction of the primary aim of the national park which must be conservation in those circumstances, as here, where there is an irreconcilable conflict.

Even before the local plan has reached the approval stage, planning consents have now been given for very substantial developments including Kingussie and An Camas Mor which are clearly in conflict with the wider long-

term aspirations of the local plan. The over reliance on policy history which the Reporters considered inappropriate, is being continued and the plan, when approved, could be predetermined by consents and commitments given in advance.

SCNP considers that it has no alternative but to sustain an objection to the housing elements of the plan and the continuing inclusion of An Camas Mor, for the following reasons:

- : the land supply for housing is unnecessarily high having regard to historical completion rates;
- : the plan has no clear proposals to meet affordable and local needs housing requirements without allowing the construction of unnecessary and damaging open market housing on a substantial scale;
- : by rejecting residency conditions on new development, local needs will be priced out of the market;
- : there is no coherent policy in the plan to prevent new housing being dominated by second homes or non-residents moving to the national Park with the intention of commuting to work outside the Park;

The policies in the plan reflect the approach historically adopted by the predecessor authorities and which have demonstrably failed to meet the needs of local communities;

- : An Camas Mar should be struck out of the plan because it was not included in the CNPP 2007, cannot be justified on a needs basis and will be in irreconcilable conflict with the conservation aim in a National Scenic Area and Policy 6 Landscape.

We urge the Park Authority to recognize that the special qualities of the National Park, as determined by the designation, require special measures to meet the local housing needs of the Park communities. It is our belief that using the blunt weapon of planning gain through open market housing is completely inappropriate for the Cairngorms National Park and representations should be made to Government at the highest level to remedy the situation. Finally, we would respectfully urge the Park Authority to pay particular regard to the Reporters' recommendations on housing and act accordingly to ensure the integrity of the public inquiry and public consultation processes are upheld.

Brief summary of key issues

The housing policies are not fit for purpose and are in contradiction of the primary aim of the Park. The original objection to the housing elements of the Plan and to An Camas Mor are therefore maintained.

- The housing land supply is unnecessarily high.
- there is no clear proposal to meet affordable and local needs housing
- there is no clear policy to prevent second homes dominating new housing
- the approach reflects that taken by the predecessor local authorities
- An Camas Mor cannot be justified, is not supported by the NPP and will be in conflict with Policy 6 and the conservation of a NSA.

The Park Authority should therefore recognise the special qualities of the Park, require special measures to meet local housing needs, and to pay attention to the Reporters Recommendations.

CNPA analysis and response

CNPA has set out its response to the Reporters Recommendations and in particular with reference to the overall need for housing, to the individual housing policies including affordable housing , and to the allocation of An Camas Mor. These matters were all considered by the Reporters during the Local Plan Inquiry. The objections raise no new planning issues and there is no material change in circumstances to warrant either reference to a further Local Plan Inquiry or modification to the plan as published.

CNPA Decision - no change. Do not refer the objections to a second Local Plan Inquiry.

Objector Ref Dr A M Jones

Agent

400f(a) Badenoch and Strathspey Conservation
Group

Modified Policy/Proposal ref Policy 01

Response to Post Inquiry Modifications

Natura 2000 sites -

It would be helpful if the roles of SNH and CNPA were clarified in the LP in respect to fulfilling this Policy. It would also be helpful if examples of types of development that realistically might arise in the CNP and that might be considered to be exempt from this Policy, were provided.

4.9 Precautionary Principle. - We realise that the CNPA have followed the wording in SPP3 regarding the precautionary principle. Nevertheless, we object to it.

Object to statement "The precautionary principle should not be used to impede development unnecessarily". We view the inclusion of such a statement as potentially a means of undermining the use of the PP, and that it could be used to favour development over conservation interests. An equivalent, balancing statement, would be that the PP should not be disregarded unnecessarily, which we consider there is sound evidence to indicate is far more likely to occur, than the PP ever impeding development unjustifiably.

There should be no question that any principle would be used unnecessarily, and it should be the CNPA's responsibility to see that this does not occur.

Change: Omit the entire sentence "The precautionary principle should not be used to impede development unnecessarily" every time it is used;

If the sentence is retained, then a counterbalancing statement should be inserted every time the above sentence is used. The counterbalancing statement should be along the lines of "The Precautionary Principle will not be disregarded unnecessarily."

4.10 Object, We recommend that added to the text in 4.10 should be a statement that the CNPA will seek to access the highest level of expertise available in SNH.

Our concerns are two-fold: Firstly, we are concerned that the CNPA should always make best possible use of SNH's top level of expertise, from specialist staff (e.g. at Great Glen House) as well as local staff.

Secondly, we understand (from SNH) that specialist staff at Great Glen House only become involved in SNH casework if a local officer requests their specialist involvement. We are concerned that, irrespective of SNH's internal mode of operating, CNPA staff should have direct access to SNH's specialist opinion.

Change: Insert wording along the lines of "The CNPA will access the highest level of expertise within SNH, at both national and local levels".

4.12 Object. In order to achieve a clear and full explanation of the purpose of EIAs, we recommend that (in addition to the existing text) a sentence is inserted to explain that Wks are designed to ensure that the environmental implications of decisions are taken into account before the decisions are made.

Change: Insert a sentence along the lines of "Environmental Impact Assessments are designed to ensure that the environmental implications of decisions are taken into account before the decisions are made."

Brief summary of key issues

- Clarify the roles of SNH and CNPA in respect of this policy.
- Provide examples of the types of development that might arise and might be considered to be exempt from this policy.
- Object to the use of the precautionary principle.
- Text to seek in para 4.10 to access the highest level of expertise available in SNH.
- text to clarify the purpose of EIAs in para 4.12

CNPA analysis and response

This matter, the policy and the supporting text were previously considered by the Reporters during the Local Plan Inquiry. The supporting text includes wording to establish the duty on public bodies including SNH and CNPA and points to where additional guidance can be found, rather than including detailed information within the local plan. The Local Plan does not set out examples of development which might not be considered under any given policy. The Reporters have considered the policy and supporting text for this policy and did not recommend such a change. In regard to the issue of precautionary principle, the changes to the text are as a result of the Reporters recommendations regarding SPP3. CNPA has set out its reasoning for agreeing with this recommendation. Para 4.10 clarifies that the planning authority will seek advice from SNH. No further change is therefore considered necessary.

Para 4.11 clarifies that the planning authority will inform developers of any special requirements required as a result of Natura Interests. This may include EIA and the details and purpose of that EIA, as specific to any given application will be explained at that stage. No further change is therefore considered necessary.

The objection raises no new planning issues and there is no material change in circumstances to warrant either reference to a further Local Plan Inquiry or modification to the policy as published.

CNPA decision - no change. Do not refer the objection to a second Local Plan Inquiry.

Objector Ref The Proprietors of Mar Centre
394d

Agent Halliday Fraser Munro

Modified Policy/Proposal ref Policy 02

Response to Post Inquiry Modifications

Policy 2 sets out to protect nationally important designations. As previously stated in our earlier objections we believe this to be a credible aim and one that is generally supported by The Mar Estate. Previously the CNPA did provide recognition that the policy will allow for both small and large-scale developments in the areas affected by national natural heritage designations. We welcomed this, however our objection related to the practical application of the policy and the specific policy wording, which, if left unchanged, is at risk of being interpreted in such a manner as to exclude development in and around Braemar, for example. We do not believe that the amended policy wording offers an alternative interpretation to the previous wording, and therefore the original objections still stands.

Changes Required to Resolve the Objection

We suggest that the policy implementation section is altered to allow for developments creating local economic or social benefits within national natural heritage designations.

Brief summary of key issues

The objection seeks the wording of the supporting text on implementation be amended to allow for developments creating local economic or social benefits within national natural heritage designations.

CNPA analysis and response

This matter was previously considered by the Reporters during the Local Plan Inquiry. Following consideration of the evidence presented at the Inquiry the Reporters did not recommend the change sought by the objector. The objection raises no new planning issues and there is no material change in circumstances to warrant either reference to a further Local Plan Inquiry or modification to the policy as published.

CNPA decision - no change. Do not refer the objection to a second Local Plan Inquiry.

Objector Ref Dr A M Jones

Agent

400f(c) Badenoch and Strathspey Conservation
Group

Modified Policy/Proposal ref Policy 02

Response to Post Inquiry Modifications

National Natural Heritage Designations (NPs, NNRs, SSSIs, NSAs) -
We support the wording of the Policy in b).

Object. We are concerned by the restricted nature of the Policy wording in a), which we view as minimalist and not adequately recognising the breadth of biodiversity, habitats and ecosystem services contributed by these sites.

Change: Amend the sentence to read "the objectives of designation, and all significant elements of the biodiversity, habitats and ecosystem services, and the integrity of the designated area, would not be compromised";

Object to use of the word 'overall' in 'overall integrity' in the Policy wording in a). The use of the word 'overall' does not provide clarity. The apparent implication that parts of the designated area are superfluous is unacceptable. The boundary of any nationally significant heritage site has been carefully considered, and decided upon, through a thorough process. There is no reason to believe that there is anything erroneous about such boundaries, and the LP provides no indication that the CNPA considers this to be so.

Change: Omit the word 'overall'.

4.16 Object. The phrase 'to an acceptable level' is too imprecise and should be qualified.

Change: Insert the word 'clearly', so that the sentence reads mitigation will be taken to mean the undertaking of measures to prevent or reduce to a clearly acceptable level, the impact of a development".

4.17 Object. We are concerned by the use of the word 'irreversible' in this paragraph. It fails to provide clarity. For example it begs the questions: irreversible over what timescale and with what level of certainty? Considering impacts on biodiversity and ecosystem integrity, it is unrealistic to believe that reliable conclusions can be drawn about the degree to which impacts will be irreversible.

Change: Omit the word 'irreversible'.

Object to phrase that the precautionary principle should not be used unnecessarily (as explained for Policy 1).

Change (as for Policy 1): Omit the entire sentence "The precautionary principle should not be used to impede development unnecessarily" every time it is used;

If the sentence is retained, then a counterbalancing statement should be inserted every time the above sentence is used. The counterbalancing statement should be along the lines of "The Precautionary Principle will not be disregarded unnecessarily".

We are concerned that there is no sentence expressing the limited nature of proposals that might be considered appropriate within nationally designated areas.

Change: Insert a sentence to provide clarity on this.

We welcome some other aspects of the wording in 4.17.

Brief summary of key issues

- a) does not adequately recognise the breadth of biodiversity, habitats and ecosystem services contributed by these sites.
- a) use of word 'overall' and 'overall integrity' as ambiguous.
- in 4.16 'to an acceptable level' is imprecise and should be qualified
- in 4.17 use of 'irreversible' as unclear.
- in 4.17 reference to precautionary principle - should not be used unnecessarily
- text should include sentence to express limited nature of proposals that might be considered appropriate within nationally designated areas

CNPA analysis and response

This matter, the policy text and supporting text were considered by the Reporters during the Local Plan Inquiry. Text at a) follows a recommendation from the Reporters. They did not recommend the change sought by the objector.

'To an acceptable level' has been included to clarify this will be to the satisfaction of the planning authority. To change this word to 'clearly' does not clarify who it is clear to. The change is not considered to raise a new planning issue. The use of the wording in 4.17 is in line with the guidance provided in NPP14, and in line with the recommendations of the Reporter in this regard.

In regard to the issue of precautionary principle, the changes to the text are as a result of the Reporters recommendations. CNPA has set out its reasoning for agreeing with this recommendation.

The supporting text also sets out the considerations the planning authority will take into account when considering developments against this policy. The text does not list exhaustively situations which might be considered to be of social or economic benefit of national importance. The Planning Authority will consider developments on an individual basis in this regard against case law, the nature of the development, and the impact it will have on the designation.

The objection raises no new planning issues and there is no material change in circumstances to warrant either reference to a further Local Plan Inquiry or modification to the policy as published.

CNPA decision - no change. Do not refer the objection to a second Local Plan Inquiry.

Modified Policy/Proposal ref Policy 02

Response to Post Inquiry Modifications

SSE has considered the Reporters' findings carefully and would not be satisfied should the Reporters' recommended policy rewording be progressed as a PM to the Local Plan. The recommended policy rewording fails to add any element of clarity to part (b) of the policy though requiring "provision of features of commensurate or greater importance" as opposed to "qualities of equal importance". This wording remains very ambiguous. SSE has considerable reservations as to the practicality of the recommended policy wording. It is anticipated that there may be real difficulties in placing a quantifiable value on some of the features which contribute towards the Park's "special qualities" and, in practice, there may be considerable scope for debate as to what is considered to be a feature of "commensurate or greater importance". In these circumstances, SSE questions whether the policy is compatible with the aim of achieving consistency in decision-making.

The source of the problem, it is considered, is that both the CNPA and the Reporters provide for an additional policy test within their respective policy wording than that required by paragraphs 137 and 138 of SPP. This is referred to further below under our comments on Policy 7.

As drafted by both the Reporters and the CNPA, the policy on national natural heritage designations requires development proposals to satisfy policy tests significantly more onerous than the legal requirements relating to internationally protected sites as set out within the Conservation (Natural Habitats, &c.) Regulations 1994. As CNPA is aware, the Regulations permit development that would affect the qualities of a internationally designated site should there be "imperative reasons of overriding public interest (which, subject to paragraph (2), may be of a social or economic nature)" without the additional requirement for the 'provision of features of commensurate or greater importance' to those that may be lost. It is respectfully suggested that to include a policy within the Local Plan which affords greater policy protection to a nationally designated site than that afforded by law to a site of international importance is illogical, inappropriate and challengeable.

Such a policy position would also be inconsistent with the Cairngorms National Park Plan 2007. It has been the consistently stated position of CNPA that the Local Plan requires to be in accordance with the terms of the Park Plan. In that regard it is relevant for the CNPA to fully recognise that pages 40-42 of the Park Plan maintain the basis of distinction between sites protected at the international and national level. The Park Plan also specifically recognises NPPG 14 as forming part of the national policy context to inform the strategic objectives of conserving and enhancing the Park, which in itself draws a distinction in policy terms between the level of protection to be afforded to national and international designations. The section of the Park Plan entitled 'Biodiversity' begins "The Park's biodiversity is of national and international importance." (page 41) and following reference to Natura 2000 sites on page 42 it is stated that "These designations carry special responsibilities for public authorities, land managers and users." It is respectfully suggested to the CNPA that it is readily apparent from these pages of the Park Plan that the Plan acknowledges the hierarchy of importance to be applied to national and international designations, attributing the highest level of protection to those sites designated at an international level. It is clear that the current draft Local Plan policy text, or that recommended by the Reporters, would be inconsistent with the Park Plan in this regard.

It is further submitted that any development which is assessed against draft policy 3 is likely to have been the subject of an environmental appraisal, and quite probably a formal Environmental Statement. In these circumstances it is considered that the potential for mitigation of significant environmental effects, including offsetting or compensatory mitigation, is best left to the process of Environmental Impact Assessment rather than planning policy. This is particularly so since the scope for mitigation of environmental effects may vary according to the particular characteristics of the individual project.

It is strongly recommended to the CNPA that a PIM is progressed to the Plan which fully addresses the above matters. Should the above recommended policy changes not be addressed there would be significant potential for both policy and legislative conflicts to occur during decision making, whether at the planning application or appeal stages of the development process. The recommended alternate policy wording provided within Inquiry Document SSE — 3, provides an amended policy wording that SSE would support. SSE would seek to discuss SSE's concerns with the CNPA.

Brief summary of key issues

The policy rewording in b) remains ambiguous. It is therefore questioned whether the policy is compatible with the aim of achieving consistency in decision-making. There is an additional test that is significantly more onerous than the legal requirements relating to internationally protected sites as set out within the Conservation (Natural Habitats, &c.) Regulations 1994. This is illogical, inappropriate and challengeable. This would be inconsistent with the NPP. Development considered under this policy would likely be the subject of an environmental appraisal, and quite probably an Environmental Statement. The additional requirement is therefore best left to the process of EIA.

CNPA analysis and response

The matters raised regarding Policy 2 were considered by the Reporters at the Local Plan Inquiry. Following consideration of the evidence presented at the Inquiry the Reporters did not recommend the changes sought by the objector.

The objection raises no new planning issues and there is no material change in circumstances to warrant either reference to a further Local Plan Inquiry or modification to the policy as published.

CNPA decision - no change. Do not refer the objection to a second Local Plan Inquiry.

Objector Ref	Hebe Carus	Agent
024d	The Mountaineering Council of Scotland	

Modified Policy/Proposal ref Policy 03

Response to Post Inquiry Modifications

4.17 The MCofS welcomes the commitment to producing supplementary planning guidance where a special area is not specifically protected by a designation. We feel strongly, that this should be produced for both hill tracks outside the NSA and wildness qualities of the Park in general. The latter is not a site-based quality but a characteristic that may be 'present at varying degrees throughout the Park, hence will require innovative thinking with respect to supplementary guidance.

Brief summary of key issues

Consider there is a need for supplementary guidance to deal with hill tracks outside the NSA and wildness.

CNPA analysis and response

Supplementary guidance to accompany the plan is listed in Appendix 3 which includes Wildness, and within this, specific guidance on hill tracks. The work is therefore programmed. The objection raises no new planning issues and there is no material change in circumstances to warrant either reference to a further Local Plan Inquiry or modification to the policy as published.

CNPA decision - no change. Do not refer the objection to a second Local Plan Inquiry.

Objector Ref John Anderson

Agent

463d

Kincraig and Vicinity Community Council

Modified Policy/Proposal ref Policy 03

Response to Post Inquiry Modifications

Under 'Other Important Natural & Earth Heritage' we note P 4.20 which relates to the Ancient Woodland Inventory but which records areas of semi-natural woodland which were present in the 1970's. This is however based on 'General Roy's 1750 maps and the OS Survey of 1860'. In particular we note that 'there is recognition that much of the information is desk-based data which raises the question as to its accuracy and consequently the weight which can be placed on the information. After all, the whole valley was ancient woodland at one time, but crucially this was of native species. Much of this has been felled and replanted several times since with, in many cases, non-native species, to the extent that one wonders if the designation can be seriously taken as 'material' to the current planning process.

Brief summary of key issues

The objector raises points relating to the ancient woodland inventory. They do not however seek any further change to the Local Plan as a result.

CNPA analysis and response

The objection does not seek any further change to the Local Plan.

CNPA decision - no change. Do not refer the objection to a second Local Plan Inquiry.

Objector Ref Dr A M Jones

Agent

400f(f)

Badenoch and Strathspey Conservation
Group

Modified Policy/Proposal ref Policy 05

Response to Post Inquiry Modifications

4.32 Implementation and Monitoring

Object to use of word 'overall' in overall integrity and connectivity of the ecosystems of the CNP. The word overall is unnecessary, weakens the level of protection, and introduces confusion over what is meant.

Change: Omit the word 'overall' every time it is used.

Object to omission of the word 'biodiversity'. We are concerned that biodiversity as such should be adequately referred to, in addition to the present wording which rightly refers to ecosystems, habitats, networks and species.

Change: Insert words 'biodiversity importance' so that it reads something like "This policy is intended to ensure that development does not weaken the biodiversity importance, integrity and connectivity of the ecosystems of the CNP".

Brief summary of key issues

Object to the use of 'overall' and the omission of 'biodiversity'

CNPA analysis and response

The words 'overall' and 'biodiversity' have not been included since the plan was placed on deposit. At this stage any person or organisation may object to or make representation in support of a proposed post inquiry modification to the plan, including the decision of the planning authority not to accept a recommendation made by the Reporter. Objections cannot be lodged at this stage to the content of the original plan. The objection raises here matters which should have been raised prior to the Inquiry and is not therefore considered to be duly made.

The objection raises no new planning issues and there is no material change in circumstances to warrant either reference to a further Local Plan Inquiry or modification to the policy as published.

CNPA decision - no change. Do not refer the objection to a second Local Plan Inquiry.

Objector Ref Hebe Carus

Agent

024f

The Mountaineering Council of Scotland

Modified Policy/Proposal ref Policy 06

Response to Post Inquiry Modifications

The MCofS experience of application of the test of minimisation of impacts has shown it to be very open to interpretation and therefore almost impossible to apply as policy. This is due to the fact that minimising impacts in reality would only be delivered by the development not going ahead. This of course -should always be considered as a background option in planning decisions. Appropriate siting, layout etc can deliver only mitigation. The implication of mitigation is what can be deemed satisfactory by the planning authority. We would therefore suggest that in this policy, at least in this context, the word minimising and its derivatives should not be used. An option would be to use a similar form of wording as in Policy 15: "Development, including any ancillary works, will be sited and designed to have no significant adverse visual or landscape impact, including any cumulative impact."

4.45 The MCofS welcomes the inclusion of this section, particularly reference to wildness.

Brief summary of key issues

Object to the wording 'minimising' and its derivatives. Suggest use of similar wording used in Policy 15.

CNPA analysis and response

The matter was previously considered by the Reporters and the wording used in this policy is in accordance with their recommendations. Following consideration of the evidence presented at the Local Plan Inquiry the Reporters did not recommend the change sought by the objector. The objection raises no new planning issues and there is no material change in circumstances to warrant either reference to a further Local Plan Inquiry or modification to the policy as published.

CNPA decision - no change. Do not refer the objection to a second Local Plan Inquiry.

Objector Ref The Proprietors of Mar Centre
394e

Agent Halliday Fraser Munro

Modified Policy/Proposal ref Policy 06

Response to Post Inquiry Modifications

Our initial response concerned the overly restrictive nature of the policy as there was a presumption against development that does not make a positive contribution to the landscape character of the Park' We also argued that this could easily be misinterpreted as a presumption against all development, as there are very few forms of development which would not have some level of impact on the 'landscape character'. Although the policy wording has been altered, we are disappointed that it appears to be even more restrictive in nature against development. It now states that:
'There will be a presumption against any development that does not complement and enhance the landscape character of the Park'

As the Post Inquiry Modifications appear to make the policy even more restrictive, our client's original objection is maintained.

Changes Required to Resolve the Objection -

We suggest that the policy wording is altered to take a more positive approach to development whilst not compromising the underlying aims of the policy in protecting the landscape of the National Park.

Brief summary of key issues

The objection seeks the policy wording be altered to take a more positive approach to development whilst not compromising the underlying aims of the policy in protecting the landscape.

CNPA analysis and response

This matter was previously considered by the Reporters during the Local Plan Inquiry. Following consideration of the evidence presented at the Inquiry the Reporters did not recommend the change sought by the objector. The wording included in the published policy is in accordance with the recommendations of the Reporters. The objection raises no new planning issues and there is no material change in circumstances to warrant either reference to a further Local Plan Inquiry or modification to the policy as published.

CNPA decision - no change. Do not refer the objection to a second Local Plan Inquiry.

Modified Policy/Proposal ref Policy 06

Response to Post Inquiry Modifications

The Reporters have recommended a number of matters that are addressed within an amended drafting of the policy as well as providing an interpretation on the type of designation that the National Park must be treated as. SSE has a number of concerns regarding the Reporters' findings in respect of this policy.

We wish to reiterate the fundamental point that the National Parks (Scotland) Act 2000 carefully avoids affording priority to any of the individual National Park aims unless a conflict between achieving the first aim and other National Park aims would occur. As a matter of law, therefore, the National Park Authority must exercise caution to ensure that they do not adopt or act in accordance with a policy the effect of which is to prioritise the first National Park aim above the other aims, in circumstances where there may be no conflict with any of the other National Park aims. Such a position may be prejudicial to the collective achievement of the National Park aims, being the general purpose of the Park Authority. Paragraph 138 of Scottish Planning Policy reinforces the position that priority is to be given to the first National Park aim only where there is "conflict between the objectives arises [that] cannot be resolved". The current policy drafting may in fact encourage decisions which are at odds with the general purpose of the Park Authority and inconsistent with paragraph 138 of the SPP. As such, SSE recommends to the CNPA that a redrafting of this policy is required in order to avoid incompatibility with the terms of the 2000 Act.

For the avoidance of doubt, in making these comments, SSE fully recognises (as was confirmed at the Hearing session) that CNPA has a legitimate interest in seeking to promote the achievement of the first National Park aim, and indeed in giving priority to that aim in the event of there being a conflict between the achievement of that aim and any other. Such a policy would be entirely consistent with the third strategic objective in the National Park Plan of conserving and enhancing the landscape. SSE would have no opposition to a reasonably worded policy which seeks to achieve these ends. However, with the greatest of respect to both CNPA and the Reporters, draft policy 7, as drafted originally by the CNPA and amended by Mr Begg, fails to meet that objective and, in summary, several fundamental problems remain

Firstly, SSE does not agree with the distinction drawn by the Reporters (see paragraphs 4.9 and 4.10) between certain policy objectives, including those relating to the first National Park aim, which are said to be properly protected by negative policy presumptions, and other policy objectives, which also relate to National Park aims, which are said to be properly protected by positive policy presumptions. The reasoning for the distinction is considered unsound. It is that distinction which is said by Mr Begg (paragraph 13.10) to justify the negative presumption contained within draft policy 7. It is respectfully suggested that his conclusion in this regard is seriously open to question. It cannot be consistent with the collective achievement of the National Park aims to adopt a policy position which differentiates between the National Park aims (except to the extent that the primacy of the first is recognised in the event of conflict). For the reasons stated at the Hearing, and reiterated above, the emphasis which has been given to the first National Park aim is apt to lead to decisions which do not fulfil the general purpose of CNPA.

Secondly, the requirement that all development must result in "positive enhancement" to the landscape of the National Park is considered to be unreasonable and unjustifiable. We cannot see how this assists in achieving the strategic objectives of the Park Plan as a whole. For example, a development which has a neutral or minimal effect on the landscape of the National Park (particularly in an area which is of limited landscape value), and one which positively supports other National Park aims, should not be met with an adverse policy presumption as required by draft policy 7;

Underlying Mr Begg's approach would appear to be the false assumption that the National Park Plan, as endorsed by Ministers, has stipulated that the whole of the National Park must be treated as a National Scenic Area (see paragraphs 13.6 and 13.17). In fact what the National Park Plan says is that an "equivalent level of consideration" will be given to landscape throughout the National Park as is given to the two National Scenic Areas within its boundaries. We read this as doing no more than indicating that in meeting the strategic objectives a high level of consideration will be given to landscape considerations, not that the whole National Park is to be treated as a National Scenic Area. Although the precise relationship between the designations of National Scenic Area and

National Park has been the subject of debate for some time, there remains a formal and fundamental distinction to be drawn between the two. That distinction has been properly observed by the Reporters to the Beaully-Denny Inquiry who have accepted the proposition that a National Park is designated as a consequence of the fact that it possess a range of attributes (not solely landscape quality) and who have also accepted the position of SNH who state within 'SNH Landscape Policy Framework: Policy Statement No. 05/01' that the quality of the landscape within the National Park varies across its area. The Scottish Ministers have accepted the findings and recommendations of the Beaully-Denny Reporters and these should, so far as relevant, be taken into account by the Park Authority as a material consideration in finalising the Local Plan. SSE would be happy to discuss these matters in detail with the CNPA should you find it helpful.

Despite the Local Plan Reporters stating that they have been strongly influenced by paragraph 25 of NPPG 14, the current recommended policy drafting (in particular the third paragraph) is in fact significantly contrary to NPPG 14 and SPP (NPPG 14 is now revoked and replaced by SPP). The policy requires that, where a development which does not positively enhance the landscape of the National Park, it must, in order to avoid being in conflict with the policy both be i) justified by social or economic benefits of national importance and have been mitigated to the satisfaction of the planning authority. By contrast, as was consistently pointed out at the Hearing session, paragraph 25 of NPPG 14 (now revoked and replaced by SPP) does not set such a high hurdle — a project can be approved if i) it does not compromise the integrity of the designated area or ii) any significant adverse effects are clearly outweighed by social or economic benefits of national importance. In other words, unlike draft policy 7, a "national importance" justification is not essential to an acceptable policy position being achieved.

Furthermore, and in any event, paragraph 25 of NPPG14 has been replaced by paragraphs 137 and 138 of the SPP. It is respectfully submitted that the SPP draws a clear distinction between NSAs/SSSIs/NNRs (paragraph 137), in relation to which the paragraph 25 test has been retained, and National Parks (paragraph 138) which makes reference to the four National Park aims and the need for priority to be given to the first aim where conflict arises which cannot be resolved (see above discussion). It is clear from the SPP, therefore, that the high threshold of acceptability set out in paragraph 137 is to apply to certain designated features including, in the landscape context, National Scenic Areas. This approach is consistent with the advice of SNH, referred to above, that landscape sensitivity and value varies across the Park. It is particularly noteworthy that even in relation to development affecting a National Scenic Area, the development does not require to be justified by virtue of being of "national importance" provided that there is no compromise to integrity.

The Local Plan requires to be consistent with national planning policy and it is quite clearly not consistent for draft policy 7 to require a much higher threshold of acceptability than that required by paragraphs 137 and 138 of SPP. In addition, the policy wording provided by the CNPA and the Reporters refers to specific landscape qualities that the policy seeks to protect. While it is helpful that particular landscape qualities are referred to, CNPA will be aware that it is SSE's position that the policy and the plan as a whole is deficient in terms of the level of spatial guidance provided. As currently drafted a developer would be unable to identify the individual landscape qualities that the policy would seek to protect. It is strongly recommended to the CNPA that a PIM to the Local Plan should be progressed to commit the CNPA to preparing Supplementary Planning Guidance that would illustrate where those landscape qualities referred to within the policy are located.

We strongly urge the Park Authority to give further consideration to the objections submitted by SSE and to review the Reporters' recommendations against the position set out above.

Brief summary of key issues

The policy must ensure it does not prioritise the 1st aim above the other aims. This must only occur where there is "conflict between the objectives arises [that] cannot be resolved". The policy therefore contains several fundamental problems. The emphasis given to the 1st aim is apt to lead to decisions which do not fulfil the general purpose of CNPA. The requirement that all development must result in "positive enhancement" to the landscape is unreasonable and unjustifiable. The underlying assumption that the whole of the Park should be treated as an NSA is wrong. What the NPP says is that an "equivalent level of consideration" will be given to landscape throughout the National Park as is given to the two National Scenic Areas within its boundaries. SPP draws a clear distinction between NSAs/SSSIs/NNRs and National Parks. SPP makes clear that the high threshold of acceptability is to apply to certain designated features including, in the landscape context, National Scenic Areas. The Local Plan requires to be consistent with national planning policy. It is clearly not consistent with SPP. The policy is also deficient in the level

of spatial guidance provided. SPG should be provided to illustrate where those landscape qualities referred to within the policy are located.

CNPA analysis and response

The matters raised regarding Policy 6 were considered by the Reporters at the Local Plan Inquiry. Following consideration of the evidence presented at the Inquiry the Reporters did not recommend the changes sought by the objector.

The objection raises no new planning issues and there is no material change in circumstances to warrant either reference to a further Local Plan Inquiry or modification to the policy as published.

CNPA decision - no change. Do not refer the objection to a second Local Plan Inquiry.

Objector Ref Strathdee Properties Ltd
453d

Agent Halliday Fraser Munro

Modified Policy/Proposal ref Policy 06

Response to Post Inquiry Modifications

Our initial response concerned the overly restrictive nature of the policy as there was a:
'presumption against development that does not make a positive contribution to the landscape character of the Park'

We also argued that this could easily be misinterpreted as a presumption against all development, as there are very few forms of development which would not have some level of impact on the 'landscape character'.

Although the policy wording has been altered, we are disappointed that it appears to be even more restrictive in nature against development. It now states that:

'There will be a presumption against any development that does not complement and enhance the landscape character of the Park'

As the Post Inquiry Modifications appear to make the policy even more restrictive, our client's original objection is maintained.

Changes Required to Resolve the Objection -

We suggest that the policy wording is altered to take a more positive approach to development whilst not compromising the underlying aims of the policy in protecting the landscape of the National Park.

Brief summary of key issues

The policy should be amended to take a more positive approach to development whilst not compromising the underlying aims of the policy in protecting the landscape.

CNPA analysis and response

This matter was previously considered by the Reporters during the Local Plan Inquiry. Following consideration of the evidence presented at the Inquiry the Reporters did not recommend the change sought by the objector. The wording included in the published policy is in accordance with the recommendations of the Reporters. The objection raises no new planning issues and there is no material change in circumstances to warrant either reference to a further Local Plan Inquiry or modification to the policy as published.

CNPA decision - no change. Do not refer the objection to a second Local Plan Inquiry.

Objector Ref Phillip John Swan

Agent

462o

Modified Policy/Proposal ref Policy 06/Ballater H1

Response to Post Inquiry Modifications

Subject of Objection: CNPA's failure to comply with agreed criteria for the impact of development on Landscape.

Relevant Documents: Local Plan Post Inquiry Modifications Strategic Environmental Assessment, paragraph 9.17.

Local Plan Post Inquiry Modifications, Policy 6, paragraph 9.17. Reporters' paragraph 13.13.

Reason for objection

a) the Reporters' recommendation in their paragraph 13.13 states: "... There is no scope for a local plan policy which supports development that has even a minimal or neutral impact on the landscape."

b) the response from CNPA is equally unequivocal: "... CNPA also welcomes the finding that, with the CNPP 2007 in mind, there is no scope for a local plan policy which supports development that has even a minimal or neutral impact on the landscape."

c) the Local Plan Post Inquiry Modifications Strategic Environmental Assessment at paragraph 9.17, states: "The development of the proposal site could lead to negative effects on the landscape and settlement character of Ballater."

It is axiomatic that this internal contradiction between CNPA's written statements is not "sustainable".

Required Changes:

Abandonment of Ballater development proposal.

Brief summary of key issues

The SEA states that the development in Ballater could lead to a negative effect on the landscape and character of Ballater. This is a contradiction to the requirements of Policy 6 and the recommendations of the Reporters. The development should therefore be abandoned.

CNPA analysis and response

Policy 6 and BL/H1 have been considered by the Reporters. The SEA is a way of making sure that environmental problems are carefully considered during the plan making process. The SEA predicts what the effects of the plan is likely to have on the environment. The Plan then takes account of these predicted effects and sets in place measures to ensure measures are put in place to make the effects less harmful or serious. Policy 6 is one measures that puts such measures in place. Other policies also exist in the plan to ensure the predicted effects are assessed during the development process. The matter of the impact of development at BL/H1 on the landscape and settlement character of Ballater was considered by the Reporters during the Local Plan Inquiry.

Following consideration of the evidence presented at the Inquiry the Reporters did not recommend the changes sought to Policy 6 or BL/H1 by the objector. The objection raises no new planning issues and there is no material change in circumstances to warrant either reference to a further Local Plan Inquiry or modification to the plan as published.

CNPA decision - no change. Do not refer the objection to a second Local Plan Inquiry.

Objector Ref Graham Adams

Agent

531i

Modified Policy/Proposal ref Policy 06/Ballater H1

Response to Post Inquiry Modifications

Subject of Objection: CNPA's failure to comply with agreed criteria for the impact of development on Landscape.

Relevant Documents: Local Plan Post Inquiry Modifications Strategic Environmental Assessment, paragraph 9.17.

Local Plan Post Inquiry Modifications, Policy 6.

Reporters' paragraph 13.13.

Reasons for Objection:

a) The Reporters' recommendation in their paragraph 13.13 states: "... There is no scope for a local plan policy which supports development that has even a minimal or neutral impact on the landscape."

The response from CNPA is equally unequivocal: "...CNPA also welcomes the finding that, with the CNPP 2007 in mind, there is no scope for a local plan policy which supports development that has even a minimal or neutral impact on the landscape."

The Local Plan Post Inquiry Modifications Strategic Environmental Assessment at paragraph 9.17, states: "The development of the proposal site could lead to negative effects on the landscape and settlement character of Ballater."

Required Changes: Abandonment of Ballater development proposal as it exists.

Brief summary of key issues

The SEA states that the development in Ballater could lead to a negative effect on the landscape and character of Ballater. This is a contradiction to the requirements of Policy 6 and the recommendations of the Reporters. The development should therefore be abandoned.

CNPA analysis and response

Policy 6 and BL/H1 have been considered by the Reporters. The SEA is a way of making sure that environmental problems are carefully considered during the plan making process. The SEA predicts what the effects of the plan is likely to have on the environment. The Plan then takes account of these predicted effects and sets in place measures to ensure measures are put in place to make the effects less harmful or serious. Policy 6 is one measures that puts such measures in place. Other policies also exist in the plan to ensure the predicted effects are assessed during the development process. The matter of the impact of development at BL/H1 on the landscape and settlement character of Ballater was considered by the Reporters during the Local Plan Inquiry.

Following consideration of the evidence presented at the Inquiry the Reporters did not recommend the changes sought to Policy 6 or BL/H1 by the objector. The objection raises no new planning issues and there is no material change in circumstances to warrant either reference to a further Local Plan Inquiry or modification to the plan as published.

CNPA decision - no change. Do not refer the objection to a second Local Plan Inquiry.

Objector Ref Zoe Griffin
399b SEPA

Agent

Modified Policy/Proposal ref Policy 12

Response to Post Inquiry Modifications

1.1 Use of resources text seems to cover the key issues. However, where possible the plan should also help to secure improvements in ecological status, and it would be good if a sentence could be added to this effect.

1.2 With regard to paragraph 4.74, specific reference should be made to the River Basin Management Plan for the Scotland River Basin District, and the supporting Area Management Plans for the Tay and North East Area Advisory Groups (all available at http://www.sepa.org.uk/water/river_basin_planning.aspx).

1.3 In Section 4.75, a reference to SEPA's development planning guidance on protection of the water environment would be beneficial. This can be found at http://www.sepa.org.uk/planning/development_planning.aspx.

Brief summary of key issues

The wording should help secure improvements in ecological status, and this should be added to the text. The text should also refer to the River Basin management plan for the Scotland River basin district, and the supporting Area management plans for the Tay and North East Advisory Group. Reference should also be made to SEPAs development planning guidance on the protection of the water environment.

CNPA analysis and response

The policy regarding Water Resources has been devised in accordance with the Reporters Recommendations and taking on board their suggested wording. The matter was previously considered by the Reporters during the Local Plan Inquiry. Following consideration of the evidence presented at the Inquiry the Reporters did not recommend the changes sought by the objector. The objection refers to recently published guidance and CNPA is not persuaded that the Plan should make reference to this. It will however remain a material consideration in the decision making process. The objection raises no new planning issues and there is no material change in circumstances to warrant either reference to a further Local Plan Inquiry or modification to the Policy as published.

CNPA decision - no change. Do not refer the objection to a second Local Plan Inquiry.

Objector Ref Strathdee Properties Ltd
453f

Agent Halliday Fraser Munro

Modified Policy/Proposal ref Policy 13

Response to Post Inquiry Modifications

Our initial objection raised concerns about the Policy not permitting extensions of existing mineral extraction, processing or recycling facilities unless it could be demonstrated that the product was for a market within the National Park. The Policy has now been rewritten, but we are disappointed to note that unless it can be demonstrated that the operations will benefit the National Park, the presumption against such minerals development still exists. Our client's objection to the policy is therefore sustained.

Strathdee Properties Ltd consider that extensions to existing mineral working operations should be favourably considered over proposals for new operations and not presumed about in the same way, and that extensions to existing mineral operations should be supported where they will meet the need of an existing market outwith the National Park.

Changes Required to Resolve the Objection - Amend the policy to reflect the above points.

Brief summary of key issues

The policy should be amended to look favourably on extensions to existing mineral workings over new operations, and that extensions should be supported where they meet the need of an existing market outwith the National Park.

CNPA analysis and response

This matter was previously considered by the Reporters during the Local Plan Inquiry. Following consideration of the evidence presented at the Inquiry the Reporters did not recommend the change sought by the objector. The objection raises no new planning issues and there is no material change in circumstances to warrant either reference to a further Local Plan Inquiry or modification to the policy as published.

CNPA decision - no change. Do not refer the objection to a second Local Plan Inquiry.

Objector Ref John Anderson
463j Kincaig and Vicinity Community Council

Agent

Modified Policy/Proposal ref Policy 13

Response to Post Inquiry Modifications

At Policy 13, 'Soil', P 4.35, we note that 'the CNP has a rich diversity of soils, from the agricultural soils ...', and then concludes 'All developments must consider their impact on this valuable resource'. We had hoped that there would be 'a presumption against' development on arable land in particular (defining 'arable' as having been enclosed, ploughed at some time and still in use for agricultural purposes) and would like to see the wording strengthened to achieve this.

Brief summary of key issues

The objector seeks a 'presumption against development on arable land in particular'

CNPA analysis and response

This matter was previously considered by the Reporters during the Local Plan Inquiry. Following consideration of the evidence presented to the Inquiry the Reporters did not recommend the change sought by the objectors. The objection raises no new planning issues and there is no material change in circumstances to warrant either reference to a further Local Plan Inquiry or modification to the policy as published.

CNPA decision - no change. Do not refer the objection to a second Local Plan Inquiry.

Objector Ref Hebe Carus

Agent

024h The Mountaineering Council of Scotland

Modified Policy/Proposal ref Policy 15

Response to Post Inquiry Modifications

4.99 The MCofS welcomes the removal of the specification of "large scale" and "commercial" wind farms. Smaller, community-owned wind farms can have as significant impact as those traditionally regarded as large or commercial.

Brief summary of key issues

Small community owned wind farms can have as significant impact as those traditionally regarded as large or commercial.

CNPA analysis and response

The point made is a statement rather than an objection. The policy sets out the criteria for the assessment of developments of a scale raised by the Objector. The changes to this policy reflect the recommendations made by the Reporters. The matter was previously considered by the Reporters during the Local Plan Inquiry. The objection raises no new planning issues and there is no material change in circumstances to warrant either reference to a further Local Plan Inquiry or modification to the policy.

CNPA decision - no change. Do not refer the objection to a second Local Plan Inquiry.

Modified Policy/Proposal ref Policy 15

Response to Post Inquiry Modifications

We also wish to record our concerns with regard to the Reporters' findings on the above policy. It is important to recall that at the Hearing session CNPA made a clear and unequivocal statement to the effect that it did not consider that it was the scale of a proposed wind farm which was, per se, important from a policy point of view. Instead, the draft policy was designed to focus upon the nature and extent of the environmental effects which a wind farm would entail (since a poorly located/designed small scale proposal may have unacceptable impacts whereas a well located-designed medium scale proposal may not). As a general principle, this seemed to SSE to be a perfectly sensible position to adopt. Furthermore, the CNPA's stated position is generally consistent with the renewable energy policies set out in the finalised draft Loch Lomond and the Trossachs National Park Local Plan, which encourages various forms of renewable energy development and contemplates consideration being given to such development even where the scheme is "large scale".

As was made clear on behalf of SSE it is accepted that a "large-scale" wind farm (i.e.. in excess of 20MW) would not generally be considered appropriate within the National Park. As a consequence, there was a significant degree of agreement between the parties on the correct approach and the debate at the Hearing session tended to revolve around the precise wording of the policy rather than wider matters of general principle. In summary, SSE favoured a policy which set out specific criteria whereas CNPA favoured a more discursive text; both draft policies were, however, designed to facilitate the same end — the promotion of sustainable renewable energy development which has acceptable environmental impacts.

It is therefore with some considerable surprise that we find that the Reporters have recommended to CNPA that the policy support for renewable energy development afforded by draft policy 16 is restricted to "small-scale" schemes. If we correctly understand his recommendation at paragraph 19.10 of the Inquiry report, Mr Begg treats a small-scale wind farm as consisting of no more than a single turbine. With the greatest of respect to the Reporter, not only does this recommendation not reflect the discussion and evidence heard at the Hearing session, it is inconsistent with both the National Park Plan, SPP and the now revoked SPP6.

As the Reporter himself acknowledges, one of the Park Plan's strategic energy objectives is of particular relevance: "Contribute to national targets for greater renewable production through community, business and domestic-scale renewable energy schemes (page 50). "

It follows from this text that, in order to make a "contribution" to national renewable energy targets, the Park Plan envisages more than very small-scale schemes (such as a single wind turbine). Page 49 of the Park Plan acknowledges the fact that settlements within the Park currently draw their energy needs from the national grid, and recognises that a more sustainable position is desirable. Recent examples of small to medium scale wind farms built in Scotland within sensitive areas include the Monan Wind Energy Project, which is a consented project located on the Isle of Harris, within a National Scenic Area, that comprised 3 turbines with an output of 2.5 megawatts. It is respectfully suggested, therefore, that the Local Plan should not be adopting a policy which is at odds with the achievement of a strategic objective specified in the Park Plan or which is contrary to SPP.

We therefore encourage CNPA to reject the Reporters' recommendations in relation to draft Policy 16 and adhere to its stated position that wind farms, and indeed other forms of renewable energy generation, will be judged according to their individual merits, taking account of the predicted environmental effects. SSE respectfully suggest that the policy text should not restrict policy support to renewables schemes under 20 MW. The supporting text should make clear that all renewable energy developments which support the aims of the Park (for example, wind, hydro, biomass) will be considered according to their individual merits. It is therefore recommended that the current wording of paragraph 4.99 of the supporting text ("make it an area incompatible with the development of large scale energy production schemes" such as commercial wind farms.") is amended to the following effect: "make it an area where large scale commercial wind farms (i.e.. in excess of 20MW) are unlikely to be acceptable. All renewable energy developments which support the aims of the Park and the National Park strategic objective regarding energy production will, however, be considered on their individual merits."

A further concern raised by Mr Begg's recommendation is that there is no need for policy 16 to make reference to the need for electricity infrastructure and, accordingly, that the relevant words within the policy should be deleted.

Notwithstanding the fact that the Reporters repeatedly accept the proposition that a Local Plan should offer a "clear steer" to developers (see for instance paragraphs 1.9, 1.10 and 4.6 of the Reporters' Report), the effect of Mr Begg's position is to remove any specific guidance tailored to energy infrastructure.

We respectfully agree with the CNPA that it is necessary that policy 16, or its supporting text, recognises that support for renewable energy generation will result in additional electricity transmission and distribution infrastructure. Electricity transmission and/or distribution infrastructure will be required to connect generation developments to the electricity transmission or distribution network. Should no connection to either of these networks be provided, generation developments would be unable to connect to the national grid. The CNPA is, therefore, encouraged to adopt a form of words within the policy, and/or supporting text, which acknowledges this fact. The extent to which electricity infrastructure assists the collective achievement of the National Park aims or the objectives of the Park Plan or Government policy on renewable energy should also be expressly stated within the policy, or supporting policy text, as a consideration that will be taken into account when assessing the acceptability of individual development proposals. In doing so it will be necessary to recognise SSE's transmission and distribution licence holder obligations, which provide the regulatory framework applicable to the provision of transmission and distribution infrastructure. These Regulations are summarised and provided as an Annex to this letter. On a similar note, it would also be appropriate for the CNPA to specifically recognise within the Local Plan that electricity distribution infrastructure will be required within the National Park to support settlement expansion and business growth. In this regard SSE has a legal obligation to provide a development or developments with connections to the distribution network upon request. This is further detailed within SSE's Transmission and Distribution Licence Holder Obligations set out in an Annex to this letter.

We also wish to remind the CNPA that during the Hearing session on Policy 20 'Developer Contributions, Mrs Moody specifically encouraged the CNPA to discuss the implication of SSE's transmission and distribution licence holder obligations with SSE. We would therefore encourage the CNPA, in the first instance, to contact Jones Lang LaSalle to arrange a meeting to discuss the policy and development implications associated with SSE's licence holder obligations.

Supporting annex -

Paper Apart: SSE License Holder Obligations
Statutory Obligations

The principle relevant statutory obligations arising from the Electricity Act 1989, with which SHETL are obliged to comply and which are relevant to the development of an electricity line are:

Section 9 (1) and (2) which provides that:

It shall be the duty of an electricity distributor and the duty of the holder of a licence authorising him to transmit electricity:-

to develop and maintain an efficient, co-ordinated and economical system of electricity distribution and transmission respectively; and

to facilitate competition in the supply and generation of electricity. Section 16 — Duty to connect on request

Section 16(1) of the Act states:

"An electricity distributor is under a duty —

(a) to make a connection between a distribution system of his and any premises, when required to do so by —

i - the owner or occupier of the premises; or

ii - an authorised supplier acting with the consent of the owner or occupier of the premises, for the purpose of enabling electricity to be conveyed to or from the premises;" (a)

Section 38 and Schedule 9 — Preservation of amenity and fisheries

Section 38 of the 1989 Act provides that Schedule 9 shall have effect. The following paragraphs of Schedule 9 are relevant:

Paragraph 3(1) to Schedule 9 states:

"In formulating any relevant proposals, a licence holder or a person authorised by an exemption to generate, distribute, supply or participate in the transmission of electricity —

a - shall have regard to the desirability of preserving natural beauty, of conserving flora, fauna and geological or physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic or archaeological interest; and

b - shall do what he reasonably can to mitigate any effect which the proposals would have on the natural beauty of

the countryside or on any such flora, fauna, features, sites, buildings or objects."

Paragraph 3(2) to Schedule 9

"In considering any relevant proposals for which his consent is required under section 36 or 37 of this Act, the Secretary of State [the Scottish Ministers in Scotland] shall have regard to-

a - the desirability of the matters mentioned in paragraph (a) of sub-paragraph (1) above; and

b - the extent to which the person by whom the proposals were formulated has complied with his duty under paragraph (b) of that sub-paragraph."

Licence Obligations

In the exercising of powers under the 1989 Act, the Secretary of State has determined standard and special licence conditions. These conditions, with which the licensees are obliged to comply, are included in the transmission licence of SHETL and the distribution licence of SHEPD.

The Requirement to Offer Terms for Connection

NGET, as GB System Operator (GBSO) has an obligation to offer terms for connection to and use of the GB transmission system, and is prohibited from discriminating between parties seeking to connect to or use the GB transmission system. Accordingly, offers are made to generation developers seeking to connect to the transmission system in Scotland.

Transmission System Security Standard and Quality of Service

NGET is obliged to plan, develop and operate its transmission system and co-ordinate and direct the flow of electricity onto and over the GB transmission system in accordance with the GB Security and Quality of Supply Standard (GB SQSS).

Similarly, SHETL has an obligation to plan and develop its transmission system in accordance with the GB SQSS, taking into account the GBSO's obligations to co-ordinate and direct the flow of electricity onto and over the GB transmission system.

Obligation to Provide Transmission Services

There is an obligation upon SHETL to make available its transmission system to NGET for the purpose of transporting electricity, and to ensure that the system is fit for that purpose. Compliance with this obligation by SHETL enables NGET, in turn, to comply with its own licence obligation to operate the full GB transmission system.

The Requirement to offer terms for Use of System and connection

To facilitate compliance with its statutory duty to connect on request, SHEPD has an obligation to offer terms for connection to and use of its distribution system including, for example, to domestic premises, housing development or distributed generation. SHEPD is also obliged to maintain certain standards in respect of the provision of Connection Services. In addition, SHEPD is not permitted to discriminate¹ in carrying out works for the purposes of connection to its distribution system.

To enable SHETL and SHEPD to comply with their respective statutory and licence obligations with regard to connection to their systems, section 10 of the 1989 Act provides SHETL and SHEPD with certain powers under Schedule 3 (which provides for the compulsory acquisition of land) and Schedule 4 (which provides, inter alia, for the right to install and keep installed electricity infrastructure) to the Act.

Brief summary of key issues

The Local Plan should not be adopting a policy which is at odds with the achievement of a strategic objective specified in the Park Plan or which is contrary to SPP. The policy should adhere to the CNPA stated position that wind farms, and other forms of renewable energy generation, will be judged according to their individual merits, taking account of the predicted environmental effects. The policy text should not restrict support to renewables schemes under 20 MW. The supporting text should make clear that all renewable energy developments which support the aims of the Park will be considered according to their individual merits.

The supporting text should also give a clear steer regarding energy infrastructure. The extent to which electricity infrastructure assists the collective achievement of the NP aims or the objectives of the NPP or Government policy on renewable energy should also be stated. The Local Plan should also state that electricity distribution infrastructure will be required to support settlement expansion and business growth.

CNPA analysis and response

The matters raised regarding Policy 15 were considered by the Reporters at the Local Plan Inquiry. Following consideration of the evidence presented at the Inquiry the Reporters did not recommend the changes sought by the objector.

The objection raises no new planning issues and there is no material change in circumstances to warrant either reference to a further Local Plan Inquiry or modification to the policy as published.

CNPA decision - no change. Do not refer the objection to a second Local Plan Inquiry.

Objector Ref Scottish and Southern Energy Plc
447f

Agent Jones Lang Lasalle

Modified Policy/Proposal ref Policy 16

Response to Post Inquiry Modifications

The Reporters note within their findings that Policy 18 is a deliberate attempt to raise the standard of design throughout the Park, that the policy sets a high threshold and that compliance "undoubtedly represents a challenge". It is also noted that "it would not be appropriate to specify particular exemptions in the policy because that would risk conflicting with the CNPP 2007." We note the Reporters' inference that it will be up to the CNPA how the policy is applied and how developments are judged against the policy.

We wish to record that we firmly disagree with the Reporters' conclusion that the policy as currently drafted is in accordance with national policy, as this judgement has been based on the perceived accordance of the policy with PAN 74 'Affordable Housing'. Not only is PAN 74 relevant only to housing proposals but a PAN is also not an expression of national planning policy. A PAN provides advice (in this case advice specific to a particular form of development) and should not be treated as an expression of policy. We therefore maintain our position that the policy and supporting policy text, as currently drafted, is not in accordance with SPP in terms of the policy advice requiring Development Plans to contain "Only policies that provide a clear indication of how a decision maker will react to a development proposal" (paragraph 14). In the context of transmission and distribution infrastructure, telecoms infrastructure and renewable energy developments, considering the nature of these developments, we cannot see how the policy as currently drafted provides a clear indication of how the CNPA would react to such a development proposal. The policy has clearly been drafted to apply to more traditional and typical forms of development. As such we strongly encourage the CNPA to recognise within the supporting text to the policy that it will not be wholly applicable to some forms development, as set out above, and that the CNPA will require to be selective in the application of the policy as a whole.

Brief summary of key issues

We disagree that the policy is in accordance with national policy in respect of PAN 74. A PAN should not be treated as an expression of policy. The policy is not in accordance with SPP para 14. The supporting text should make clear that it will not be wholly applicable to some forms development, and that the CNPA will require to be selective in the application of the policy as a whole.

CNPA analysis and response

The matters raised regarding Policy 16 were considered by the Reporters at the Local Plan Inquiry. Following consideration of the evidence presented at the Inquiry the Reporters did not recommend the changes sought by the objector.

The objection raises no new planning issues and there is no material change in circumstances to warrant either reference to a further Local Plan Inquiry or modification to the policy as published.

CNPA decision - no change. Do not refer the objection to a second Local Plan Inquiry.

Objector Ref The Proprietors of Mar Centre
394h

Agent Halliday Fraser Munro

Modified Policy/Proposal ref Policy 17

Response to Post Inquiry Modifications

The policy aims to reduce carbon emissions of certain developments by at least 15% above that required by the 2007 Building Regulations. Our former objection to this policy was based on the relevance of this policy as a planning matter. We also had additional concerns over planning officers being appropriately qualified and the weight attached to such a policy in determining planning applications. It was therefore previously suggested that the policy should be removed or at least make allowances for locally sensitive solutions and an opt-out to be available. This was partially covered by the addition of the following:

'Proposals will be exempt from this standard only where developers are able to demonstrate that technical constraints exist. In such circumstances, developers will be required to meet the standard by providing equivalent carbon savings elsewhere in the area.'

Since the Reporters considered the policy at the Inquiry, however, in February 2010 SPP6: Renewable Energy was revoked and was replaced by the consolidated SPP. This is of significance as it was SPP6 that required local authorities, through Local Plan policies, to require new developments to achieve at least an extra 15% reduction in carbon emissions beyond the 2007 building standards. SPP now contains no such provision and we therefore question the need for this policy within the new Local Plan.

Changes Required to Resolve the Objection -

The deletion of the policy from the Local Plan is suggested, as the means of reducing carbon emissions in new developments will be achieved through Building Standards legislation and does not require to be dealt with by a Local Plan policy.

Brief summary of key issues

Since the Reporters considered the policy, SPP6 has been revoked and replaced with SPP which contains no provision to make the reductions in standards set out in the policy. The need for the policy is therefore in question. The policy should be deleted.

CNPA analysis and response

The provisions on carbon emissions in the relevant sections of SPP 2010 will be a material consideration in any planning application, and will be treated accordingly, and the retention of Policy 17 will not prejudice any applicant or objector to a planning application. The matter was previously considered by the Reporters during the Local Plan Inquiry and CNPA is not persuaded that the Plan should be further amended to refer to this issue. CNPA is therefore minded to make no further change to the policy.

CNPA decision - no change. Do not refer the objection to a second Local Plan Inquiry.

Objector Ref Strathdee Properties Ltd
453s

Agent Halliday Fraser Munro

Modified Policy/Proposal ref Policy 17

Response to Post Inquiry Modifications

The policy aims to reduce carbon emissions of certain developments by at least 15% above that required by the 2007 Building Regulations. Our former objection to this policy was based on the relevance of this policy as a planning matter. We also had additional concerns over planning officers being appropriately qualified and the weight attached to such a policy in determining planning applications. It was therefore previously suggested that the policy should be removed or at least make allowances for locally sensitive solutions and an opt-out to be available. This was partially covered by the addition of the following:

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In February 2010 however, after the Reporters' consideration of the policy at the Inquiry, SPP6: Renewable Energy was revoked and was replaced by the consolidated SPP. This is of significance as it was SPP6 that required local authorities, through Local Plan policies, to require new developments to achieve at least an extra 15% reduction in carbon emissions beyond the 2007 building standards. SPP now contains no such provision and we therefore question the need for this policy within the new Local Plan.

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The deletion of the policy from the Local Plan is suggested, as the means of reducing carbon emissions in new developments will be achieved through Building Standards legislation and does not require to be dealt with by a Local Plan policy.

Brief summary of key issues

Since the Reporters considered the policy, SPP6 has been revoked and replaced with SPP which contains no provision to make the reductions in standards set out in the policy. The need for the policy is therefore in question. The policy should be deleted.

CNPA analysis and response

The provisions on carbon emissions in the relevant sections of SPP 2010 will be a material consideration in any planning application, and will be treated accordingly, and the retention of Policy 17 will not prejudice any applicant or objector to a planning application. The matter was previously considered by the Reporters during the Local Plan Inquiry and CNPA is not persuaded that the Plan should be further amended to refer to this issue. CNPA is therefore minded to make no further change to the policy.

CNPA decision - no change. Do not refer the objection to a second Local Plan Inquiry.

Objector Ref Scottish and Southern Energy Plc
447h

Agent Jones Lang Lasalle

Modified Policy/Proposal ref Policy 18

Response to Post Inquiry Modifications

Considering the discussions held at the Local Plan Inquiry Hearing session regarding the above policy, it is surprising that the Reporters' findings do not include any reference to SSE's main point of objection. We again recommend to the CNPA that to allow a clear application of Policy 20, the phrase "normally require" should be removed. It is the case that planning permission cannot be seen to be 'bought' and a policy requirement normally requiring a cash contribution to address impacts from a development does not sit comfortably with this principle. As previously set out, there is case law directly applicable to securing planning agreements which supports this point of objection. We strongly recommend that to achieve a clear policy and a clear link between the policy drafting and the lawful application of the policy in decision making, further thought requires to be given to amending the policy wording. In addition, we also strongly recommend that the supporting text to the policy recognises the constraints that SSE's licence holder obligations, with regard to electricity transmission and distribution infrastructure, would place on providing developer contributions as part of a transmission or distribution development proposal. It would be appropriate to distinguish between traditional forms of development, such as housing, and electricity transmission and distribution development within the supporting text of the Plan in terms of the ability to provide developer contributions to address the effects of a development. Again, as referred to above, SSE would be willing to meet with the CNPA to discuss such matters in detail prior to the CNPA publishing PM to the Plan.

Brief summary of key issues

The phrase "normally require" should be removed. The supporting text should recognise the constraints that SSE's licence holder obligations, with regard to electricity transmission and distribution infrastructure. It should distinguish between traditional forms of development, such as housing, and electricity transmission and distribution development.

CNPA analysis and response

The matters raised regarding Policy 18 were considered by the Reporters at the Local Plan Inquiry. Following consideration of the evidence presented at the Inquiry the Reporters did not recommend the changes sought by the objector.

The objection raises no new planning issues and there is no material change in circumstances to warrant either reference to a further Local Plan Inquiry or modification to the policy as published.

CNPA decision - no change. Do not refer the objection to a second Local Plan Inquiry.

Objector Ref Strathdee Properties Ltd
453g

Agent Scott Leith

Modified Policy/Proposal ref Policy 18

Response to Post Inquiry Modifications

Our client previously objected to the Developer Contributions Policy raising the following issues: reference should be made to Circular 12/1996; planning gain contributions should be based on defined needs, and contributions should not be sought from developments that would contribute to the economic well being of the National Park where this would put the project's viability at risk.

The proposed changes in the Policy's supporting text clarifying that a planning gain contribution should only be used to offset the impact of a development is to be welcomed. Our client also supports the added reference to monitoring the policy through the assessment of developer contributions received.

Changes Required to Resolve the Objection

To allow our client's objection to be removed, we continue to request that the Policy should contain an exception where contributions will not be sought from developments that would contribute to the economic well being of the National Park where this would put the project's viability at risk.

Brief summary of key issues

The policy should contain an exception where contributions will not be sought from developments that would contribute to the economic well being of the National Park where this would put the projects viability at risk.

CNPA analysis and response

This matter was previously considered by the Reporters during the Local Plan Inquiry. Following consideration of the evidence presented at the Inquiry the Reporters did not recommend the change sought by the objector. The objection raises no new planning issues and there is no material change in circumstances to warrant either reference to a further Local Plan Inquiry or modification to the policy as published.

CNPA decision - no change. Do not refer the objection to a second Local Plan Inquiry.

Objector Ref John Anderson

Agent

463n Kincaig and Vicinity Community Council

Modified Policy/Proposal ref Policy 18

Response to Post Inquiry Modifications

Policy 18 relates to 'Developer Contributions', but at the time of writing the Supplementary Guidance Note on the subject is not yet available. We are concerned that levels might be set which would significantly widen the price gap between 'affordable' and 'open market' housing sectors as an unintended consequence. This risk must be avoided. We also note that if there are any issues arising with regard to the setting of a Contribution which cannot be resolved through planning conditions, ... then a Section 75 or other legal agreement may be an appropriate mechanism to secure the development'. A solution of last resort we would hope.

Brief summary of key issues

Object to the levels of contribution that might be set which would widen the gap between affordable and open market housing. Also object to the use of Section 75 agreements which should be used as a last resort.

CNPA analysis and response

The levels of contribution will be established through supplementary guidance. The use of legal agreements is in accordance with normal planning practice. These matters were considered by the Reporters during the Local Plan Inquiry. Following consideration of the evidence presented to the Inquiry the Reporters did not recommend the changes sought by the objectors. The objection raises no new planning issues and there is no material change in circumstances to warrant either reference to a further Local Plan Inquiry or modification to the policy as published.

CNPA decision - no change. Do not refer the objection to a second Local Plan Inquiry.

Objector Ref Kelsey Tainsh

Agent

540c

Modified Policy/Proposal ref Policy 18

Response to Post Inquiry Modifications

Objects to the Cairngorms National Park Local Plan post modifications May 2010 document.

In light of the Governments "Doomsday" cuts to Public budgets and expenditure of between 25% and 40% over the coming years, and possibly throughout the CNPA 25 Year Vision period. If the CNPA Board and the publication of this important document are to attract any credibility at all, be it inside and/or outside of the CNP. Then there is a genuine and pressing need for the CNPA Board to include within it:

: An honest and realistic "open, fair and transparent CNPA Board Policy" appraisal of the likely implications of these proposed Public budget cuts.

: Details of any CNPA Board Public Budget Contingency Plans, to meet "unpredictable and predictable" shortfalls of CNP Public finance..

Additional information supplied -

Introduction

Residents within the CNP are well aware that all CNPA and Highland Council budgets may well be subject to "Doomsday" cuts of between 25% and 40% over the CNPA 25 Year vision period, and that this will inevitably have a knock on adverse impact upon the small print aspirations and detail of the; Cairngorms National Park Local Plan Post Inquiry Modifications consultation May 2010 document.

The Highland Development Plan Scheme 2010

The Highland Development Plan Scheme 2010 Summer 2010 document (i.e. on page 5) outlines that;

We provide services within the CNP. However, they (i.e. the CNPA Board) control the planning and, in time, will be producing a local development plan for their area. See www.cairngorms.gov.uk for details.

CNP Development like An Camus Mor — Highland Council & CNPA Provision of Services

Developments within the CNP like the proposed "gigantic and highly controversial" An Camus Mor development will inevitably need considerable Public finance to; install, administrate, inspect, police and secure, finance, clean, repair, maintain, upgrade and eventually renew, a wide variety of Public services and facilities.

At this point in time, it must be extremely difficult to predict, itemise and cost exactly what budget resources will be required to deliver all of these services and facilities. In addition, it is highly likely that; new legislation, building standards and health and safety, will see an ongoing increase in the amount of Public finance involved.

Availability of Public Funds for Highland Council and CNPA Developments within the CNP

Throughout the present recession and subsequent recovery period, which realistically I predict, could take us well beyond the CNPA 25 Year Vision period. My crystal ball is subject to depressingly "hurricane force" gloomy predictions, as to the ongoing availability of sufficient Public finance, to meet the; Highland Council, CNPA Board and CNP local communities and social departments future development requirements.

Cairngorms National Park Local Plan Post Inquiry Modifications Consultation May 2010

I believe that if the "Cairngorms National Park Local Plan Post Inquiry Modifications Consultation May 2010" document and the CNPA Board are to have any credibility at all. It is highly desirable that the CNPA Board highlight in "Plain English" within this important document:

: Exactly what the CNPA Boards Budget Policy is for the CNP, throughout the CNPA 25 Year Vision period?

: what the Public budget is to provide services for:

a) the An Camus Mor development?

b) all the other proposed individual and local community (i.e. Grantown-on-Spey) developments within the CNP?

: what will happen if there is a shortfall in these Public budgets?

: what other Public budgets are likely to be cut, to meet shortfalls in CNPA Board authorised future development?

: what other contingency plans the CNPA Board has to meet unpredictable CNP Public Budget requirements.

Brief summary of key issues

The objection raises issues regarding finances, the spending and committing of public funds and the availability of public funds to pay for various developments promoted in the plan.

CNPA analysis and response

The issue of the CNPA budgets is not a matter for the Local Plan. In terms of the payment of services required to support various developments proposed through the Local Plan, this is addressed through Policy 18 Developer Contributions. This policy was considered by the Reporters during the Local Plan Inquiry. Following consideration of the evidence presented at the Inquiry the Reporters did not recommend the changes sought by the objector raised here. No material change in circumstances to warrant either reference to a further Local Plan Inquiry or modification to the plan as published has occurred.

CNPA decision - no change. Do not refer the objection to a second Local Plan Inquiry.

Objector Ref The Proprietors of Mar Centre
394j

Agent Halliday Fraser Munro

Modified Policy/Proposal ref Policy 19

Response to Post Inquiry Modifications

The Mar Estate are not adverse to the principle of the policy, however the objection relates to the low threshold of development which requires affordable housing. This currently stands at three units. With such a low figure we would argue that the policy is unworkable and such a requirement will threaten the viability of smaller residential developments with such a requirement.

Changes Required to Resolve the Objection -

As the policy wording has not changed we maintain our original objection that this policy is too onerous and restrictive. In order to allow the objection to be removed, the threshold of the scale of development that requires a contribution to affordable housing would have to be increased. We consider that developments of 10 units or more having to contribute to affordable housing would be a more reasonable figure.

Brief summary of key issues

The policy is too onerous and restrictive. The threshold of the scale of development that requires to make a contribution should be increased to 10 units or more.

CNPA analysis and response

This matter was previously considered by the Reporters during the Local Plan Inquiry. Following consideration of the evidence presented at the Inquiry the Reporters did not recommend the change sought by the objector. The objection raises no new planning issues and there is no material change in circumstances to warrant either reference to a further Local Plan Inquiry or modification to the policy as published.

CNPA decision - no change. Do not refer the objection to a second Local Plan Inquiry.

Objector Ref Dr A M Jones

Agent

400g(f) Badenoch and Strathspey Conservation Group

Modified Policy/Proposal ref Policy 19

Response to Post Inquiry Modifications

5.44 Object. This paragraph is not written with sufficient clarity.

BSCG has understood from the CNPA that affordable housing is allocated according to applicants' points. An applicant only gains a relatively small number of points for applying for an affordable house within their own community. Therefore the points system provides only a relatively small advantage to local applicants. This means the ability of affordable housing in the CNP to provide housing for local needs is limited, as is common knowledge. The phrase "to ensure many housing units built in the CNP will be for households in housing need..." is misleading and provides only part of the picture. The reality appears to be that, most commonly, the CNPA only requires 25% of housing to be affordable, and the rest is open market. It is potentially misleading for the LP to state that 'many' housing units are affordable, when in fact a far higher number (commonly 3 times as many i.e. 75% compared to 25%) are open market.

The CNPA further gives a misleading impression by referring to 'local' demand, and the NPA seeking as high a proportion of affordable units as possible to meet this local demand. In fact, the points system provides only a relatively small advantage to local people, so it is misleading and unrealistic to refer to meeting local demand. Further information is needed to provide a reality check.

It is also misleading to indicate that the CNPA is seeking to achieve as high a proportion of affordable units as possible. The CNPA delivers affordable housing as a proportion of open market housing, and the proportion is usually 25%, and very exceptionally 40%.

Change: 5.44 should be rewritten to provide information that is accurate, specific and clear about how the CNPA's Affordable Housing Policy works, what it can realistically deliver, and what the CNPA can realistically achieve through this Policy.

5.48 Object to final sentence 'The NPA will continue to work with the relevant organisations within the Park to develop their allocations policies to ensure they are as responsive to the needs of individuals and communities in the Park as possible' for similar reasons as for 5.44. This sentence provides a misleading impression of what the CNPA is achieving.

Change: Omit entire sentence. Alternatively, provide accurate, specific and clear information on how the 'needs of individuals and communities in the Park' are really being met through developments in allocations policies.

Brief summary of key issues

Object to para 5.44 as it is not clear. The issues raised relate to the use of allocation points systems, the amount of units that will be provided, and the issue of local demand.

CNPA analysis and response

Para 5.44 - the change to the wording of this paragraph relates only to the reference to the production of supplementary guidance on the topic. It is appropriate that the level of detail proposed by the objector be contained within supplementary guidance in line with best practice on the contents of Local Plans.

Para 5.48 - the objection relates to the final sentence of the paragraph which has not been changed since 1st modifications. The objection does not relate to this wording. At this stage any person or organisation may object to or make representation in support of a proposed post inquiry modification to the plan, including the decision of the planning authority not to accept a recommendation made by the Reporter. Objections cannot be lodged at this stage to the content of the original plan. The objection raises here matters which should have been raised prior to the Inquiry and is not therefore considered to be duly made.

These objections do not raise new planning issues and there is no material change in circumstances to warrant a further Local Plan Inquiry or modification to the Proposals maps.

CNPA decision - no change. Do not refer these objections to a second Local Plan Inquiry.

Objector Ref Susan Matthews **Agent**
437w Ballater and Crathie Community Council

Modified Policy/Proposal ref Policy 19

Response to Post Inquiry Modifications

Paragraph number 5.47 change of 'will' to 'may' in two places. This was not in the Reporters findings not in any objection. The change makes the statement redundant since the use of Section 75 Planning agreements is an option. Return to the use of 'will' removing 'may' in both places of 5.47.

Brief summary of key issues

Reinstate the word 'will' to para 5.47 rather than the modified word 'may'.

CNPA analysis and response

Policy 19 and the issue of retaining stock as affordable in perpetuity were previously considered by the Reporters who were of the view that any mechanism to retain stock as affordable must have a break point and opportunity for review. The issue of permitted development rights was also considered by the Reporters who expressed concern that this might act as a disincentive to property improvement and maintenance and run counter to the ethos of current planning reforms which include unburdening householders. The changed wording is included to reflect the need for the option for review and to assess the option of a break point, and to allow for its use in specific cases as appropriate. The matter was therefore previously considered by the Reporters during the Local Plan Inquiry.

Following consideration of the evidence presented at the Inquiry the Reporters did not recommend the change sought by the objector. The objection raises no new planning issues and there is no material change in circumstances to warrant either reference to a further Local Plan Inquiry or modification to the policy and supporting text as published.

CNPA decision - no change. Do not refer the objection to a second Local Plan Inquiry.

Objector Ref Strathdee Properties Ltd
453j

Agent Halliday Fraser Munro

Modified Policy/Proposal ref Policy 19

Response to Post Inquiry Modifications

Strathdee Properties Ltd previously objected to the CNPA's Policy on affordable housing, on the following grounds: it is too onerous and unworkable; Government funding will not be available to deliver the level of affordable housing suggested; the housing figures that support the Policy are not accurate; no evidence exists to suggest that the national target of 25% is not appropriate to the National Park, and the allocation of land for affordable housing should be considered.

The requirement for developments of three units to contribute to affordable housing will threaten the viability of smaller residential developments.

Changes Required to Resolve the Objection

As the policy wording has not changed, we maintain our original objection that this policy is too onerous and restrictive. In order to allow the objection to be removed, the threshold of the scale of development that requires a contribution to affordable housing would have to be increased.

Brief summary of key issues

The policy is too onerous and restrictive. The threshold of the scale of development that requires to make a contribution should be increased.

CNPA analysis and response

This matter was previously considered by the Reporters during the Local Plan Inquiry. Following consideration of the evidence presented at the Inquiry the Reporters did not recommend the change sought by the objector. The objection raises no new planning issues and there is no material change in circumstances to warrant either reference to a further Local Plan Inquiry or modification to the policy as published.

CNPA decision - no change. Do not refer the objection to a second Local Plan Inquiry.

Objector Ref Phillip John Swan

Agent

462i

Modified Policy/Proposal ref Policy 19

Response to Post Inquiry Modifications

Subject of Objection: CNPA's change of wording in paragraph 5.47 of the Post inquiry Modifications

Relevant Documents: Post Inquiry Modifications, paragraph 5.47.

Reasons for Objection:

a) In paragraph 5.47 of the Post Inquiry Modifications, CNPA proposes to change the wording from "will" to "may" (affected text is shown as bold below) in the statement: The planning authority will / may make use of conditions and Section 75 Planning Agreements to secure the implementation of these policies with developers and retain the units as affordable in perpetuity. To retain the mixture of stock provided through this policy, the ability to extend such dwellings will / may also be controlled by the removal of permitted development rights."

This represents a significant degradation of the wellbeing of those people most in need of affordable housing and is unacceptable.

Also, this change has not been considered by the Reporters during the inquiry conducted in May / June 2009.

Required Changes:

Reinstatement of the word "will" in the text of paragraph 5.47. Alternatively, if CNPA chooses not to implement my requested change, I wish to exercise my rights under the terms of Regulation 37(1)(d)(i) of the Plan Regulations, S11983 No 1590.

Brief summary of key issues

Reinstate the word 'will' to para 5.47 rather than the modified word 'may'.

CNPA analysis and response

Policy 19 and the issue of retaining stock as affordable in perpetuity were previously considered by the Reporters who were of the view that any mechanism to retain stock as affordable must have a break point and opportunity for review. The issue of permitted development rights was also considered by the Reporters who expressed concern that this might act as a disincentive to property improvement and maintenance and run counter to the ethos of current planning reforms which include unburdening householders. The changed wording is included to reflect the need for the option for review and to assess the option of a break point, and to allow for its use in specific cases as appropriate. The matter was therefore previously considered by the Reporters during the Local Plan Inquiry.

Following consideration of the evidence presented at the Inquiry the Reporters did not recommend the change sought by the objector. The objection raises no new planning issues and there is no material change in circumstances to warrant either reference to a further Local Plan Inquiry or modification to the policy and supporting text as published.

CNPA decision - no change. Do not refer the objection to a second Local Plan Inquiry.

Modified Policy/Proposal ref Policy 19

Response to Post Inquiry Modifications

Subject of Objection: CNPA's failure to acknowledge and respond to Reporter's criticisms of key parts of Policy 21.

Relevant Documents: Reporters' paragraphs 24.36, 24.37, 24.39, 24.49, 24.50.

CNPA's Analysis of Reporters' Recommendations and Post Inquiry Modifications to Cairngorms National Park Local Plan Text, Policy 21.

Reasons for Objection:

a) On the subject of offsite contributions toward affordable housing, the Reporters' paragraph 24.36 states: "The third set of post inquiry proposed modifications introduces the wider option of offsite contributions for all developments as opposed to small-scale only. We consider that this suggestion represents another unjustified dilution of both earlier versions of the local plan, and it suffers the same problem as those earlier versions over how this money will be controlled and spent. In particular, the proposed change does not address the distinct possibility that the size of the market housing allocation will use up the supply of effective housing land, nor does it link to any specific allocations for affordable housing. In other words, there can be no certainty that the money raised could be targeted and spent in an appropriate way to address a clear and distinct local need."

CNPA does not appear to have responded to, or even acknowledged this very important issue. It must do so.

b) Reporters' paragraph 24.37 states: "The finalised plan introduces the notion that development solely for affordable housing will be favourably considered. However, we note with concern that this presumption in favour is not carried forward into the proposals maps for individual settlements as seems to be required by SPP 3 and the CNPP 2007.7

CNPA's response, in its paragraph 1.12, includes the following two statements: "CNPA accept that the identification of sites in the proposals maps is in accordance with SPP3. Through its previously stated commitment to gather community based information to inform the Local Development Plan, CNPA accept that this would be an appropriate way forward in the future."

The first sentence seems to attempt to give the impression to the reader that CNPA is compliant with SPP3. To rectify this misleading impression the words "in accordance with" should be changed to "a requirement of".

The second sentence is a statement of commitment "to gather community based information to inform the Local Development Plan", With regard to identification of suitable sites for 100% affordable housing I fear that, by having placed an advertisement in the Deeside Piper and by placing a request for nominations of land for development on its web site, CNPA might be tempted to claim its obligation to source 100% affordable sites, as part of gathering "community based information to inform the Local Development Plan" is complete. However, this exercise was not carried out effectively: it was inadequately publicised; too little time was allowed for land owners to respond with development proposals and there was no proactive effort by CNPA, such as making direct approaches to known land owners. This exercise must therefore be repeated in a more proactive manner by CNPA.

c) Reporters' paragraph 24.39 states: " The objectors make 3 other suggestions that have relevance for the wording of the policy, namely:

: make better use of brownfield and infill sites;

: allow developments of about 75% affordable housing on and beside existing community areas; and

: encourage particular kinds of affordable housing on some crofting land."

CNPA should take the opportunity to respond to these suggestions from Reporters.

d) Reporters' paragraph 24.49 states: "Faced with the imperative of providing as many affordable houses as possible, but in the absence of any clear idea of the total number of affordable houses needed in each settlement within the Park, the CNPA approach has been to allocate substantial greenfield areas for the development of new open market housing and to devise a policy whereby the developers of these sites make a cash or kind contribution towards the provision of affordable housing. We have considerable reservations about this overall approach, especially bearing in mind the impact of the current economic downturn on house building. Further, from our experience, we find it probable that providing a more generous supply of market housing land than is required will encourage greater second home and ownership by retired persons, to further skew demographics and undermine