

CAIRNGORMS NATIONAL PARK AUTHORITY

FOR DECISION

Title: **Approval of Modifications to Proposed Cairngorms National Park Local Development Plan and of Publication of Notice of Intention to Adopt the Plan**

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Purpose of Report

To ask the Planning Committee to consider and approve the modifications to the Proposed Cairngorms National Park Local Development Plan, with publication of the modifications and Proposed Plan (as modified), publication of the National Park Authority's Notice of Intention to Adopt the Plan, notification of parties who made representations on the Plan, and to send the required documents to the Scottish Ministers.

Summary

The Cairngorms National Park Authority (CNPA) is the body with duty to prepare Local Development Plans (LDP) for the Cairngorms National Park. Preparation of the LDP began in 2010. A Main Issues Report was published and consulted on from September to December 2011 and a Proposed LDP published and consulted on from April to July 2013. The Scottish Government's Department of Planning and Environmental Appeals (DPEA) undertook an Examination of the Plan between February and September 2014 and the CNPA received the Examination Report on 8 September 2014.

The recommendations within the Examination Report are largely binding on the planning authority, with departure from them only possible for limited and specific reasons. Officers have considered the recommendations in detail and made modifications to the Proposed Plan. Most of the recommendations are relatively small and straightforward, providing further clarity or ensuring compliance with national policy or other regulations. The Paper highlights the most significant or notable ones including those linked to housing land supply, the Habitats Regulations Appraisal of the Plan, and the significant changes to the Plan at Carr-Bridge and Nethy Bridge. The Paper asks the Planning Committee to approve the modifications and the steps needed to take the modified Plan to adoption.

Recommendation

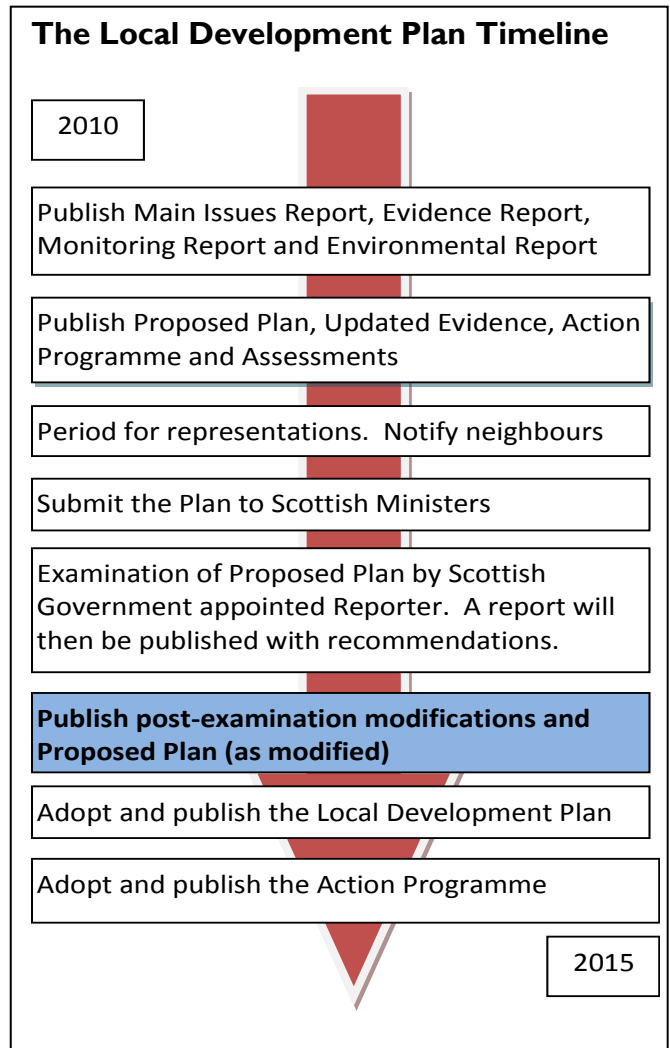
That having considered the advice in this Paper and the information contained in Appendices, the Planning Committee approve:

- a) the modifications proposed to the Cairngorms National Park Local Development Plan as a result of the Examination of the Plan and Reporters' Recommendations and publication of the proposed Plan (as modified);**
 - b) the publication of notices and notification of those who made representations on the Proposed Plan of the Planning Committee's intention to Adopt the Plan (as modified) with a view to adopting the Plan in February 2015.**
 - c) the submission of the modifications, Proposed Plan (as modified), Habitats Regulations Appraisal Record, SEA Environmental Report, and copy of advertisement of Notice of Intention to Adopt the Plan to Scottish Ministers by 8 December 2014.**
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APPROVAL OF MODIFICATIONS TO PROPOSED CAIRNGORMS NATIONAL PARK LOCAL DEVELOPMENT PLAN AND OF PUBLICATION OF NOTICE OF INTENTION TO ADOPT THE PLAN

Background

1. The Cairngorms National Park Authority (CNPA) is the body with a duty to prepare Local Development Plans for the Cairngorms National Park. The CNPA prepared a Local Plan that was adopted in 2010 and covers all the National Park apart from the areas within Perth and Kinross that were added to the Park in 2010.
2. The process of preparing a Local Development Plan (LDP) for the Park that (when adopted) will replace the National Park Local Plan 2010 began at the same time as that plan was adopted in 2010. The LDP will also replace the local plans that apply within in the Perth and Kinross part of the Park, as well as the historic structure plans that remain part of the formal development plan for the Park. The timeline for preparation of the LDP is shown in the figure to the right with the current stage highlighted.
3. A Main Issues Report for the LDP was published and consulted on between September and December 2011. The comments on the Main Issues Report informed the development of a Proposed Local Development Plan that was published for consultation between April and July 2013. The CNPA then sent the plan and unresolved issues to the Department of Planning and Environmental Appeals (DPEA) who undertook an Examination of the Plan between February and September 2014. The CNPA received the Scottish Government's DPEA Report on the Examination of the Proposed Cairngorms National Park LDP on 8 September 2014.



The Examination Report and Reporters Recommendations

4. The Department of Planning and Environmental Appeals (DPEA) Examination Report and Reporters recommendations are available in entirety on the CNPA website and DPEA website (<http://www.dpea.scotland.gov.uk/CaseDetails.aspx?id=11487>). The list of Reporters recommendations is also shown in Appendix 1 alongside the proposed modifications.
5. The recommendations are largely binding on the planning authority. Regulation 2 of the Town and Country Planning (Grounds for declining to follow recommendations) (Scotland) Regulations 2009 and Section 19 (11) of the Town and Country Planning (Scotland) Act 1997 set out the circumstance where planning authorities can depart from recommendations:
 - a) *would have the effect of making the LDP inconsistent with the National Planning Framework, or with any SDP or national park plan for the same area;*
 - b) *is incompatible with Part IVA of the Conservation (Natural Habitats etc) Regulations 1994;*
 - c) *would not be acceptable having regard to an environmental assessment carried out by the planning authority on the plan following modification in response to recommendations;*
 - d) *are based on conclusions that could not reasonably have been reached based on the evidence considered at the Examination.*
6. Planning Circular 6/2013: Development Planning, describes the development planning system in Scotland and explains the legislative provisions that apply. It notes in paragraph 94 that the “*Criterion (d) above addresses the possibility of clear errors (including factual errors) having been made by the reporter. It does not relate to circumstances where the planning authority disagrees with the planning judgement reached by the reporter.*”

The modifications proposed

7. The list of proposed modifications to the Plan is shown in Appendix 1, linked to each of the Reporters’ recommendations between numbers 1 and 177, with a further few consequential changes for clarity between numbers 178 and 184. The Proposed Cairngorms National Park Local Development Plan (as modified) is included as Appendix 2 to this Paper.
8. Most of the changes recommended to the Plan are straightforward in that the Reporters have directed the CNPA to make changes (many of which were suggested or agreed by the CNPA) to improve clarity, to ensure compliance with national policy and to ensure necessary safeguards for European sites that could be adversely affected by the Plan are incorporated within it. There are a few changes that are either more complicated or significant that we would like to draw to the committee’s attention before asking they are approved.

Modifications related to the Habitats Regulations Appraisal

9. First, the committee will have seen that many of the community sections of the Plan have what is essentially the same modification in relation to complying with Natura legislation and the planning authority's duty as the competent authority. The Reporters used the Habitats Regulations Appraisal (HRA), Scottish Natural Heritage's representation and the CNPA's response to recommend these changes. They provide the necessary mitigation in the HRA which allows the CNPA to conclude that the plan will not lead to any significant adverse effects on European sites.

Modifications related to the housing land supply

10. Second, the Examination of the Proposed Plan considered in detail the housing land supply for the Park, including a Hearing session on the topic in the summer of 2014. This has resulted in recommendations for additional information on the housing land supply being provided in the Plan as an appendix and within each relevant community chapter. The Reporters also recommended a change in the way the housing land supply was calculated. This included recommendations on how to calculate figures for part of the Park where there is little reliable data and a clear rationale for a reducing any allowance for generosity to 10% rather than the 25% we had used for Badenoch and Strathspey. These recommendations provide welcome clarity for this LDP and for the development of future local development plans for the Park.

Modification to include reference to wildness in Landscape policy

11. Third, there is a recommendation (number 30) in the Examination Report where we propose to deviate slightly from the recommended wording. The variation proposed does not have a significant effect on the impact of the modification but helps ensure consistency and clarity. The recommendation is that the words "*including wilderness*" are inserted to the landscape policy. We think that this is a typographical error and that the Reporter meant to say "*wildness*" as this is consistent with the amendment sought by SNH, agreed by the CNPA and the term used in the supporting text as well as a term recommended to be added to the glossary.

Am Fasgadh, Kingussie

12. Fourth, there was clearly some misunderstanding between CNPA officers and the Kingussie and Vicinity Community Council and Am Fasgadh Regeneration Company in the interpretation of representations for the Am Fasgadh site at Kingussie. This has led to a smaller area of the Am Fasgadh site being identified as an economic development proposal site than the land suggested by and controlled by the Am Fasgadh Regeneration Company. The Community Council and Am Fasgadh Regeneration Company have expressed concerns that this will limit their ability to plan for and gain necessary permissions for the future use of their whole site. Officers have reassured the Community Council that while it would have been preferable to have matching boundaries, we do not consider that this will affect their ability to redevelop the site as

the policies of the Plan and CNPA are likely to be generally supportive of their work. We have also reassured them that the masterplanning exercise that the Am Fasgadh Regeneration Company are undertaking for their whole site is the right way of planning for and supporting any future planning applications.

Modification to site H1 Carr-Bridge

13. The planning committee are aware that the Reporters recommended the significant reduction in size of the H1 proposal site at Carr-Bridge. They provided clear reasoning in the Examination Report for their recommendation. The relevant paragraphs are repeated in Appendix 3.
14. In considering this matter, the Reporter made a factual error in assuming that there were no live planning consents in the area of sites H1 and H2 (noted in paragraphs 4 and 5 of Appendix 3). The CNPA did not confirm that the outline planning consent for 117 units granted on appeal (February 2005) had lapsed. The CNPA continue to have a live, undetermined, reserved matters application for the site that keeps the appeal consent live. Committee members will also know that the CNPA has a separate live, undetermined application for full planning permission for parts of the same area and a live Section 42 application which seeks to amend phasing and other conditions of the outline planning consent.
15. Both the CNPA and the landowner/developer with an interest in the site have asked the DPEA about the mistake and whether the DPEA could provide clarification in the matter. In both cases, the DPEA replied that: *“As the report has been submitted to the authority, the reporters no longer have any locus in this case. It is now for the authority to consider the report and make any modifications and consequential changes it considers appropriate, bearing in mind the advice set out in paragraphs 92-95 of Circular 6/2013: Development Planning. It is also, of course, for the authority to determine outstanding applications as it thinks fit, subject to the Section 25 test.”*
16. The Reporter had all the information about the history of the sites that was submitted by CNPA and those who made representations. In paragraphs 7 to 9 of Appendix 3, the Reporter sets out their reasoning for changing the boundary of the H1 site. Those reasons, linked to landscape, amenity and providing a defensible boundary to the settlement, are valid planning considerations. While the Reporter’s mistake over the status of the live planning permission is relevant to this matter, there is no requirement for the planning authority or the Reporter to continue to propose an existing but unimplemented planning consent within the LDP. The Reporter could have reached the same conclusion in the full understanding of the extant permission.
17. There is an argument that had the Reporters not made the mistake, they might have taken the same approach as they did at An Camas Mòr (where they explained they did not consider the principle of development on the site because of the recent consent) and simply let the proposed allocations stand. However, the sites are clearly very different in scale, location and history. The decision to grant permission at An Camas Mòr is a recent

one made by the CNPA, while the Carr-Bridge consent is nearly ten years old, has not been implemented and subsequent applications for full planning permission for smaller parts of the site have been made though not yet determined. The CNPA's own approach to allocating housing land in the area has not followed the outline consent boundary exactly in either the adopted Local Plan 2010, nor in the proposed LDP. Each site has its own context, issues and different objections or representations, so one would expect that different issues would be given different weight in recommendations for different sites.

18. The conclusion reached by the Reporter is one that could have been reached whether or not they understood that there was a live planning consent in the area of H1 and H2. The reduced area of H1 that the Reporter recommends is allocated in the Plan is within the boundaries of the extant outline planning consent. CNPA officers do not consider that this recommendation meets any of the strict tests for departing from the Examination Report. Specifically, we cannot recommend that the criterion (d) of the Regulations (that the recommendation is based on conclusions that could not reasonably have been reached based on the evidence considered at the Examination) applies to this recommendation. The Reporter has set out reasonable conclusions that they could have reached in the knowledge of the extant permission from 2005.
19. Officers therefore recommend that the Carr-Bridge H1 site is modified as per the Examination Report. A consequence of the factual error by the Reporter is that the Housing Land Supply Tables inserted via the modifications for Carr-Bridge and in Appendix I of the Proposed Plan (recommendation/ modifications 11 and 12 of Appendix I to this Paper) must be updated to accurately reference the extant permission for 117 units.

Modification to site H1 Nethy Bridge

20. Finally, the Examination Report also recommends the removal of the site H1 in Nethy Bridge. The Reporter gives clear reasons for the recommendation and has made no factual error in relation to the site. The CNPA must make the modification to the Proposed Plan as per the recommendation.

Supporting Assessments

Habitats Regulations Appraisal

21. The Habitats Regulations Appraisal (HRA) provides the formal checking mechanism for the CNPA as the competent authority to ensure that it can conclude that the Plan will have no adverse effects on the integrity of any European sites. The HRA been updated in light of the recommendations and modifications in the Examination Report. The Record of HRA is provided as Appendix 4 to this paper.
22. The HRA has been undertaken in consultation with Scottish Natural Heritage (SNH) and is a comprehensive appraisal of potential effects on European sites that could be affected

by the Plan. The key potential effects of the Plan relate to Capercaillie Special Protection Areas (SPAs) and River Special Areas of Conservation (SACs). The Examination Report incorporates advice from SNH and from the HRA record of the Proposed Plan in its recommendations and the Proposed Plan has been modified to reflect the recommendations. The HRA concludes that the plan will not adversely affect the integrity of any European site.

Strategic Environmental Assessment

23. The Strategic Environmental Assessment (SEA) has been reviewed and Environmental Report updated to take account of the Examination Report recommendations and of comments on the SEA during the consultation on the Proposed Plan. The Environmental Report of the SEA is included as Appendix 5 to this paper. The modifications to the Proposed Plan have little overall effect on it or its effect on the environment. The comments on the SEA have resulted in small changes to the methodology and information provided in the Environmental Report. However, overall, the policies of the Plan remain protective of the environment so the effects on the environment are likely to be relatively small.

Status of the Proposed Plan and Report

24. Until the new LDP is adopted the current development plans remain the basis for assessing planning applications and making decisions. The Proposed Plan and Examination Report already carry weight in determining planning applications. It will carry more significant weight once the Planning Committee have approved the modifications and the Proposed Plan (as modified) as it is now in the final stages before adoption.

Next steps

The Local Development Plan

25. By the 8th of December 2014, the CNPA (within three months from the 8th of September when we received the Examination Report) must have sent copies of the modifications, modified LDP, necessary assessments and copy advertisement of Notice of Intention to Adopt the Plan to the Scottish Ministers. We also have to publish the documents; let those who made representations know they are published and that the CNPA intends to adopt the Plan; and publish an advertisement of our Notice of Intention to Adopt in Papers.
26. Following the submission to Scottish Ministers, there follows a period of 28 days before the CNPA can adopt the Plan. The Scottish Ministers could direct changes or other actions during that time. Unless the CNPA has been directed otherwise by the Scottish Ministers, it can adopt the plan after the 28 period has passed. We expect to ask the Planning Committee to formally adopt the Local Development Plan at the February 2015 Planning Committee meeting.

Supplementary Guidance

27. The Supplementary Guidance (SG) that accompanies the Plan also needs to be updated and modified in light of some of the Reporters recommendations and comments on it from the consultation period. It too must be sent to Scottish Ministers for scrutiny for up to a 28 period before it can be adopted. The planning team will now work on updating the SG for approval by the Planning Committee at the February Planning Committee meeting.

Raising Awareness of the new Local Development Plan

28. The planning team will have a programme of information meetings with key stakeholders and users of the Local Development Plan over the first part of 2015. This will include meetings with partner local authorities and their planning officers, with networks such as the Developers Forum and Community Representatives Planning Network. The effective and consistent use of the Plan and understanding of the requirements of policy (particularly where it has been influenced by the HRA process) is critical to its delivery and to the contribution that development and the planning system makes to the delivery of the aims of the National Park.

Recommendations

That having considered the advice in this Paper and the information contained in Appendices, the Planning Committee approve:

- a) the modifications proposed to the Cairngorms National Park Local Development Plan as a result of the Examination of the Plan and Reporters' Recommendations and publication of the proposed Plan (as modified);**
- b) the publication of notices and notification of those who made representations on the proposed Plan of the Planning Committee's intention to Adopt the Plan (as modified) with a view to adopting the Plan in February 2015.**
- c) the submission of the modifications, proposed Plan (as modified), Habitats Regulations Appraisal Record, SEA Environmental Report, and copy of advertisement of Notice of Intention to Adopt the Plan to Scottish Ministers by 8 December 2014.**

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13 November 2014
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Appendices:

1. Table of Reporters' Recommendations and Proposed Modifications to Proposed Plan
2. Proposed Cairngorms National Park Local Development Plan (as modified)
3. Extract of Reporter's Conclusions on sites H1 and H2 Carr-Bridge from pages 379-381 of Department of Planning and Environmental Appeals Examination Report on Proposed Cairngorms National Park Local Development Plan
4. Updated Habitats Regulations Appraisal (HRA) Record
5. Updated Environmental Report of Strategic Environmental Assessment (SEA)