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**CAIRNGORMS NATIONAL PARK AUTHORITY**

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**DRAFT MINUTES OF THE PLANNING COMMITTEE**

held at Community Hall, Boat of Garten

on 21 November 2014 at 11.00am

**Members Present**

Peter Argyle (Deputy Convenor)	Bill Lobban
Duncan Bryden	Eleanor Mackintosh (Convenor)
Paul Easto	Mary McCafferty
Dave Fallows	Willie McKenna
Katrina Farquhar	Fiona Murdoch
Jeanette Gaul	Gordon Riddler
Kate Howie	Gregor Rimell
Gregor Hutcheon	Brian Wood
John Latham	

**In Attendance**

Simon Harrison, Head of Planning  
Gavin Miles, Planning Manager, Forward Planning and Service Improvement  
Katherine Donnachie, Planning Officer, Development Management  
Fiona Murphy, Planning Officer, Development Management  
Peter Ferguson, CNPA Legal Advisor, Harper MacLeod LLP  
Alix Harkness, Clerk to the Board  
Dee Straw, Planning Administration and Systems Officer  
Matthew Hawkins, Landscape and Ecology Manager

**Apologies:**

Angela Douglas

**Agenda Items 1 & 2:**

**Welcome and Apologies**

1. The Convenor welcomed all present and advised that a successful site visit to Nethy Bridge had taken place before today's Planning Committee meeting.
2. Apologies were received from the above Member

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## **Agenda Item 3:**

### **Minutes & Matters Arising from the Previous Meeting**

3. The minutes of the previous meeting, 24 October 2014, were approved subject to the following amendments:
  - At Para. 16i): The word 'core' to be removed and the word 'path' to be changed to 'track';
  - At Paras. 6 & 7: The reference to the Highland Council Finance Committee be replaced with the Highland Council Resources Committee.
4. There were no matters arising.
5. The Convenor provided an update on the Action Points from the previous meeting:
  - Action Point at Para. 20: The Objection has been lodged with the Highland Council;
  - Action Points at Para. 29:
    - i. The process of distributing leaflets will continue as before where it is either enclosed in the Board mail or distributed at the next meeting. Should any Members be unsatisfied with this arrangement, Members should raise this with Duncan Bryden, Board Convenor as the decision to change this process needs to be made at a Board level;
    - ii. The appointed Reporter Mr Stephen Hall will be carrying out a site inspection of the Appeal site on Tuesday 9<sup>th</sup> December at 1pm. The Reporter has requested a demonstration of the clay pigeon shooting. Katherine Donnachie is the contact, should anyone have any further questions;
    - iii. Is in hand;
    - iv. Has been discharged.

## **Agenda Item 4:**

### **Declaration of Interest by Members on Items Appearing on the Agenda**

6. There were no interests declared.

## **Agenda Item 5:**

### **LDP Modifications and Intention to Adopt**

7. Gavin Miles, Strategic Policy and Improvement Manager presented a report on 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 the representations on the Plan, and to send the required documents to the Scottish Ministers. Gavin added the following points:
  - a) In reference to Appendix 2 of the paper, this is a draft for the printers and there are a few typos in punctuation, formatting errors and the maps have not yet been updated which will be resolved;

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- b) Mathew Hawkins, Landscape and Ecology Manager is here to answer any questions on the Habitats Regulations Assessment;
- c) Following decisions made today, the documentation will be completed and then proceed with publishing the modifications and modified plan, publish notices of intention to Adopt the Plan and send the relevant documents to Scottish Ministers who have 28 days to consider the Plan and potentially direct changes;
- d) Appendices 4 and 5 have the Habitats Regulations Appraisal (HRA) Record and the Strategic Environmental Assessment Environmental Report which are both critical parts of the process of preparing the Plan;
- e) The HRA in particular is the tool that allows the CNPA as the competent authority under the Habitats Regulations to conclude that the Plan will not have a significant adverse effect on any European sites;
- f) The generosity of the housing land supply has been reduced to an additional 10% in Badenoch & Strathspey where there had been 25% previously;
- g) There is one odd recommendation in relation to the Landscape Policy where the recommendation is to use the term wilderness rather than wildness as SNH asked for and the CNPA agreed with. However, this must have been a typographical error on the part of the Reporters as they also asked that wildness be the term defined in the glossary;
- h) There has been some misunderstanding during the process of the land that the Am Fasgadh Regeneration Company in Kingussie control and wanted identified within the Plan. The Kingussie Community Council and Regeneration Company are worried that the mismatch between their property and what's allocated in the Plan for economic development will prevent them redeveloping the site. Officers have reassured them that it will not and that their approach to masterplanning for the whole site is the right way to move forward. The whole area is within the settlement boundary of Kingussie;
- i) The DPEA report recommends that the Nethy Bridge H1 site in the proposed plan is removed. There are no potential grounds for the CNPA to depart from this recommendation;
- j) The Reporters have recommended a significant reduction in the size of the H1 allocation at Carr-Bridge;
- k) The Reporters made a mistake in relation to the status of a live planning permission in the area. They have assumed, wrongly, that the planning permission has expired. Both the CNPA and the developer with an interest in the site have asked for clarification from the DPEA on this issue but have been told they no longer have any locus in the case;
- l) This was factually inaccurate. The site continues to have a live outline planning permission granted on appeal in 2005 for 117 houses within a large area encompassing the sites H1 and H2 in the proposed Plan. The permission remains live because the CNPA has a live, undetermined reserved matters application dating from 2007;

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- m) The sites, H1 and H2 have been the CNPA's preferred sites for housing in the proposed plan, with a lower capacity of 94 units. They are closely linked to a third application for full planning permission for housing on those two areas by the same developer. The sites were promoted in the Proposed Plan and through the Examination of the Plan. The DPEA were advised that negotiations were taking place with the developer for the withdrawal of the larger site in favour of the CNPA preferred sites and also clarified that the developer was unwilling to do so till they had secured consent for the new sites;
  - n) In deciding how to proceed, it is important to take account of the Reporter's error. Whatever is decided today may be challenged. The developer is upset at the potential loss of housing land, and this site is one of the ones linked to the legal challenge of the current adopted Local Plan;
  - o) It is therefore recommended that the modifications asked for by the DPEA in this case are made. These options have been considered with Peter Ferguson, our Legal Advisor. The Reporter sets out a planning justification for their recommendation. It is repeated in Appendix 3 of the Paper and provides a set of valid planning reasons;
  - p) It is not known what the Reporter would have concluded had they not made the mistake. The outline planning consent was a relevant consideration in the matter but there is no requirement for the planning authority, or the Reporter, to perpetuate consents as allocations. The CNPA was proposing different sites in the Proposed LDP and the owner /developer was also asking for sites that matched their more recent live planning applications, not the older outline permission;
  - q) There is an argument that the Reporter should have dealt with the site in the same way as they did at An Camas Mòr, where the outline consent was given significant and explicit weight in their conclusion. However, the sites are not simply comparable. An Camas Mòr is a recent permission granted by CNPA and promoted directly by CNPA in the proposed Plan. The Carr-Bridge consent is an old one that is not directly promoted in the proposed Plan. Different sites, partly linked to more recent planning applications were promoted in the proposed Plan;
  - r) For those reasons, we have consider that while the Reporters might have come to a different conclusion with the knowledge of the extant permission, they could also have come to exactly the same conclusion on the basis of the evidence in front of them. That would be a different planning judgement to ours but easily within the scope of their role. For those reasons, we conclude that while we disagree with it, the recommendations should be followed in this case.
8. In response to a question asking how much weight would be given to the DPEA appeal decision should there be future challenge in relation to the Carr-Bridge site, Peter Ferguson, CNPA Legal Advisor made the following points:
- a) It is useful to look at the previous court decisions of the Challenge to the 2010 Local Plan where the Carr-Bridge and Nethy Bridge sites were specifically considered, and at the status of the outline consents which were in place on both sites at that stage. Peter added that the Judge who decided that case in the Court of Session, Lord

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Glenny, was clear that an outline consent should not dictate the content of the Local Plan and that there are a number of different considerations which feed into those policies in the Plan;

- b) It can be a material consideration but the weight to be given to that is entirely for the decision maker, which in this case was the Reporter;
  - c) The starting point for the analysis is, there is now a statutory obligation to accept modifications which are proposed by the Reporter except in the four narrowly defined exemptions detailed in paragraph 5 of the Paper;
  - d) Only one of the 4 exceptions has any possible relevance in this case and the test as it is set out is that we would need to be satisfied that the Reporter could **not** have reached the conclusion that he did;
  - e) Circular 6/2013 assists the understanding of this particular exception which addresses the possibility of clear errors including factual errors. There has been a clear factual error in this case however we need to separate the factual error from the conclusion which the Reporter reached;
  - f) The circular goes on to say this exemption does not relate to circumstances where the Planning Authority disagrees with the planning judgement. So we have a factual error but there is also a disagreement on the planning merits of whether the site should remain in or out;
  - g) The CNPA's position is different from the Reporters recommendation, but the Reporters recommendation appears to be based on legitimate planning considerations. So, to evoke the exemption in this case you would need to be satisfied that the Reporter - considering all of the evidence including the factual position of the outline exemption - could not (rather than just would not) have reached the conclusion that he did.
9. The Committee were invited to ask Gavin Miles points of clarification, the following were raised:
- a) Is there any evidence of a Reporter having made such an error before? Does any mechanisms exist which would allow us to ask that they take another look at the Carr-Bridge site? Gavin advised that as soon as it was noticed they had approached the DPEA who advised the locus was no longer with them to rectify. Murray Ferguson added that he had spoken with the Deputy Director of the Reporters Unit who had advised that this was the standard approach with no alternative;
  - b) What are the legal implications associated with this decision? Gavin advised that people can challenge the Local Development Plan however officers consider the proposed way forward minimises the risks as far as possible given the circumstances.
  - c) Had the Am Fasgadh Regeneration Company had reassurance in writing? Gavin advised that Grant Moir had written to them within the last 3 months. The Planning Committee agreed they were content with that;
  - d) What are the next steps? Gavin advised that: the documents need to be finalised and sent to Scottish Ministers; notices of intentions to adopt need to be published along with the documents for public information; and those who made

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representations on the plan need to be informed of the intention to adopt the published documents. The Scottish Ministers has a 28 day period to consider the plan and may direct changes during that period. Unless Ministers have directed otherwise, the CNPA can formally adopt the Local Development Plan following the 28 day period. Gavin added that this is likely to be in February 2015 taking the Christmas holidays into account. Gavin also advised that supplementary guidance would be brought forward for approval;

- e) Once the decisions are made today, does it give the Local Development Plan more weight going forward? Gavin confirmed that it would then carry significant weight;
  - f) Would the Core Path Plan be adopted at the same time as the Local Development Plan? Gavin advised that the Core Paths Plan was included as one of the supplementary guidance documents but that the Core Paths Plan is considered by a DPEA Reporter under Access legislation and approved by the Scottish Minister. The CNPA must wait till the Core Paths Plan completes its own process of approval before it can be brought back to supplementary guidance.
10. The Committee having considered the advice in the Paper and the information contained in the Appendices, agreed to 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 Regulation Appraisal Record, SEA Environmental Report, and a copy of advertisement of Notice of Intention to Adopt the Plan to Scottish Ministers by 8 December 2014.
11. **Action Points arising: That a letter is drawn up to accompany the Proposed LDP and documents being sent to the Scottish Government which explains the Planning Committee's decision in relation to the recommendation for the Carr-Bridge HI site and factual error made by the DPEA.**

### **Agenda Item 6:**

#### **Report on Called-In Planning Application:**

#### **Erection of 58 houses, associated roads & footways**

#### **At Land At School Road And Craigmore Road, Nethy Bridge**

#### **(2013/0119/DET) (Detailed Planning Permission)**

12. The Convenor informed Members that a request to address the Committee had been received, within the given timescale, from:
- Objector – Tessa Jones on behalf of Badenoch and Strathspey Conservation Group
13. The Convenor informed Members that a further late request to address the Committee had been received, from:

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- Applicant / Agent – Richard Hughes/ Samuel Sweeney accompanied by Duncan Eunson (Engineer) and Andy Mckenzie (Ecologist).
14. The Committee agreed to the requests and agreed to set aside Standing Orders to let the Applicant address the Committee.
15. Fiona Murphy presented a paper recommending that the Committee refuse planning permission for the reasons stated in the report. Fiona advised the Committee of the following typos in the Paper:
- a) The date the application was Called-in is 22 April 2013 not 21 November 2014 as page 1 of the Paper states;
  - b) On page 48 of the Report, within the Recommendation in bold, the words ‘for Inverburn Ltd’ to be deleted.
16. The Committee were invited to ask the Planning Officer points of clarification, the following were raised:
- a) Clarification as to where the settlement boundary will be. Fiona illustrated this on the map, and advised that it will include the Craigmore Road site but excludes the School Road site;
  - b) With reference to paragraph 1 of the report it states 44 affordable houses are proposed, should this not be 15 affordable houses? Fiona confirmed that this should read 15.
17. Sam Sweeney was invited to address the Committee. The presentation covered the following points:
- The background to the current proposals;
  - The perceived way in which the CNPA delayed and dealt with the application;
  - The lack of communication between the developer and the Planning Officers;
  - The claim that recent documents hadn’t been uploaded to CNPA Planning portal which meant it wasn’t accessible to Consultees;
  - The fact that no opportunity to respond to the discovery of green shield moss was given;
  - Disappointment in the way the report had been prepared with factual mistakes which were believed to be misdirecting.
18. The Committee were invited to ask questions of the speaker and the following points were raised:
- a) What number of affordable units is proposed? Samuel Sweeney advised that through the pre-application consultation process it became very clear that the community didn’t want affordable houses within the village that were subject to registered social landlord letting protocol and that they would rather have houses that were affordable to buy, hence the reasoning for 1, 2 and 3 bedroom sized housing. Therefore the reference to affordable has been confused; there are 44 units on School Road, 29 of which are low cost affordable private homes. It was agreed with the community that these would be offered first to local people to buy and thereafter out to the general public. Thereafter regardless of what the community

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wants, there is a further obligation for the developer to provide 15 affordable homes to satisfy the requirement of the 25% contribution.

- a) What measures are in place to ensure that the houses remain affordable and on the market for local buyers? Samuel Sweeney advised that this had been discussed in depth with Di Alexander and Don McKee previously. He advised that other than the affordable 15 units, there isn't a straight forward mechanism that would restrict the buying of these to locals only. In respect of the further 15 affordable units, under the advice from the Planning Gain Officer, the Applicant has had discussions with Highland Council and RSL to identify who has funding for social houses for affordable homes;
  - b) How many houses in Craigmore development would be affordable? Samuel Sweeney advised that none of these would be affordable;
  - c) The discovery of the green shield moss is mentioned in 3 of the reasons for refusal, why had this not been picked up on over the years? Andy McKenzie, the Applicant's Ecologist came forward to answer this question. He advised that they had looked for it but didn't find it;
  - d) Had the green shield moss been discovered earlier on, what would you have done? Andy McKenzie advised that he would have let the CNPA know and re-surveyed the area. He added that once a map of distribution had been created he would have looked into how it could have been addressed accordingly;
  - e) Was the green shield moss that the Planning Committee had looked at, during the site visit this morning, inside the boundary of the development? Andy McKenzie advised that he didn't know as the areas in which the green shield moss had been discovered had not been disclosed to them. Fiona Murphy advised that the moss being referred to was outside the development boundary at that point.
19. Tess Jones was invited to address the Committee. The presentation covered the following points:
- The biodiversity of site including the Ancient Woodland sites, a number of species which are European protected and many UK Red List Priority Species;
  - On the Craigmore site, there are many mature trees with a good age range;
  - With reference to the CNPA Nature Action Plan and Capercaillie Framework, School Wood provides much needed connectivity for the two SAC's.
20. The Committee were invited to ask questions of the speaker and the following points were raised:
- a) Regarding the overall extent of the ecological viability of School Wood, would the proposal of carving out some areas of that wood have an overall impact on its ecology as a whole? Tess Jones advised that one cannot expect ancient woodland to function well when its size is reduced continually.
21. The Convenor thanked the speakers.
22. The Committee discussed the application and the following points were raised:

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- c) Has the green shield moss been found to exist on the development sites? Matthew Hawkins advised that it had been found on 12 locations, 5 of which are either on or within the development area;
  - d) With reference to the definition of 'Affordable Housing' on page 201 Agenda Item 6, Appendix 2, a point was made that this development was a step in the right direction of housing mix which some on the Planning Committee would like to see coming forward;
  - e) The Applicant seemed to suggest some element of mitigation and restructuring would not materially affect the ecological integrity of the site however the objectors think that it would, could this be clarified? Matthew Hawkins advised the wood is listed as an ancient woodland site, a systematic survey of NVCC found that it was of low value however having the green shield moss on the land puts the site in high ecological value.
  - f) The applicant's ecologist, Andy McKenzie, was asked what advice would he have given to his client if they had identified the existence on site earlier of green shield moss? Andy advised that he would have recommended a change in the layout and overall design of the proposed development given the need to protect the green shield moss.
23. The Committee agreed to refuse the application subject to the reasons stated in the report.
- 24. Action Points arising:                   None**
25. The Planning Committee adjourned for a short comfort break at this point before taking the remaining items of the agenda before lunch.

### **Agenda Item 7:**

#### **Report on Called-In Planning Application:**

**Removal of 13 sections of rock armour river bank protection followed by bank reprofiling at Moulzie, Acharn and Braedownie. Re connection of three paleochannels - one at Moulzie and two at Acharn**

**At River South Esk And White Water At Moulzie, Acharn And Braedownie, Glen Doll**

**(2014/0265/DET) (Detailed Planning Permission)**

26. The Convenor informed Members that despite a request to address the Committee being received, within the given timescale, from the Agent – Dr Lorna Wilkie, 'Perils in Peril' LIFE+GB Project Officer (Scotland), she had decided not to attend.
27. Fiona Murphy presented a paper recommending that the Committee approve the application subject to the conditions stated in the report.
28. The Committee commended the work of the Perils in Peril Project and agreed to approve the application subject to the conditions stated in the report.

**29. Action Points arising:                   None.**

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### **Agenda Item 8:**

#### **Report on Called-In Planning Application:**

**Removal of Shieling Ski-Tow & replace with a modern rope-tow of similar length and profile**

**At Cairngorm Mountain, Glenmore**

**(2014/0251/DET) (Detailed Planning Permission)**

30. The Convenor informed Members that no request to address the Committee had been received however the Applicant was available to answer questions.
31. Katherine Donnachie presented a paper recommending that the Committee approve the application subject to the conditions stated in the report.
32. The Committee were invited to ask the Planning Officer points of clarification, the following were raised:
  - g) As a point of accuracy, clarification was sought as to whether the existing ski-tow had been there for 60yrs. A Planning Committee Member advised that it was erected in 1963;
  - h) In relation to reason number 3 of the Report, does that mean the construction statement has been received? Katherine Donnachie confirmed that it did;
  - i) In relation to reason number 3 of the Report, were there any details regarding what was proposed? Katherine advised that the intention was to pull back the ground and reinstate it. Katherine added that the company have a lot of experience of carrying this out to a high standard. Would the fencing be replaced? Katherine advised that this fence was not part of this proposal;
  - j) What would be done with the existing ski tow and equipment? Katherine advised that it will be reused in another ski centre.
33. The Committee discussed the application and agreed that they welcome the investment.
34. The Committee agreed to approve the application subject to the conditions stated in the report.
- 35. Action Points arising:                   None.**

### **Agenda Item 9:**

#### **Any Other Business**

36. The Convenor advised that it was Don McKee's last day in the office and to thank him for the excellent support he had given to Planning Committee a card would be circulated following the meeting for all Planning Committee to sign.
37. Murray Ferguson reported that as a result of interviews of the Development Planning posts, 2 appointments had been made. He advised that he was unable to disclose names until written confirmation from the candidates had been received. Murray went on to say that interviews will take place next week for the Development Management vacancy.
38. A Planning Committee Member suggested that advice to applicants addressing the Planning Committee be strengthened to encourage them to manage their time, rehearse

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beforehand and to focus on the positive points, rather than dwell on the negativities.

The Convenor advised that appropriate advice is already in place.

**39. Action Points arising:           None**

### **Agenda Item 10:**

#### **Date of Next Meeting**

40. Friday 19 December 2014 at Albert Hall, Ballater.

41. Committee Members are requested to ensure that any Apologies for this meeting are submitted to the Clerk to the Board, Alix Harkness.

42. The public business of the meeting concluded at 13.05