
CAIRNGORMS NATIONAL PARK AUTHORITY

Title: APPENDIX I

**TO CNPA RESPONSE TO THE SCOTTISH
GOVERNMENT CONSULTATION ON:**

- **FEEES FOR PLANNING APPLICATIONS;**
- **DEVELOPMENT DELIVERY;**
- **DEVELOPMENT PLAN EXAMINATIONS;**
- **MISCELLANEOUS AMENDMENTS TO THE
PLANNING SYSTEM; and**
- **GENERAL PERMITTED DEVELOPMENT ORDER.**

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APPENDIX I

PART I

BACKGROUND

1. This Appendix sets out in more detail the context and content of the 5 Scottish Government consultations on further reform of aspects of the planning system and gives the recommended CNPA response to the specific questions asked in the consultations. It is intended that this will be submitted along with a letter to the Scottish Government Chief Planner explaining the Cairngorms National Park planning context and drawing attention to specific issues that they should be aware of when introducing formal changes following the consultations.
2. The Scottish Government recently¹ set out a series of proposals for the future reform of the planning system in Scotland. A document entitled 'Planning Reform – Next Steps' was issued in March 2012 and summarises a package of

¹ Derek MacKay, Minister for Local Government and Planning, made a statement to the Scottish Parliament on 28 March 2012 on this subject.

proposals which are intended to assist “the planning system reach its potential in supporting economic recovery.” A number of key priorities have been identified as the next stage of planning modernisation, including:

- Promoting the plan led system;
- Driving improved performance;
- Simplifying and streamlining processes; and
- Delivering development.

3. ‘Planning Reform – Next Steps’ builds on the reforms in the Scottish planning system which have been achieved incrementally over the past number of years. The Planning etc (Scotland) Act 2006 is credited with making the most significant changes to the planning system in 60 years and was drawn up alongside a commitment to make the planning system more efficient and inclusive. This was followed by ‘Delivering Planning Reform’ in 2008 which “set out the Scottish Government’s commitment to progress planning modernisation through culture change rather than legislation.” It is acknowledged in ‘Planning Reform – Next Steps’ that while a consensus remains around planning modernisation, there have been dramatic changes in the economic context since the reforms were originally drawn up. The current purpose is therefore to take account of the changed circumstances whilst forging ahead with a system that “can be more efficient, effective responsive and agile to meet the challenges ahead.” It is in this context that the key priorities detailed above have been identified.
4. *Promoting the plan-led system* : one of the key features of the reforms which have taken place to date is the promotion of a plan led system. This is intended to guide actions and decisions in the long term public interest. ‘Planning Reform-Next Steps’ sets out the Scottish Government’s intentions that development plans should increasingly be “about place and people rather than policy compendia.” Alongside this is an intention to ensure that communities are fully involved in the process as “greater community influence can also carry the benefit of strengthening the primacy of development plans.” Reference is made to the 2006 Planning Act in which a series of changes to procedures for Local Development Plans was introduced. The changes are described as “bringing some significant benefits” such as a reduction in the time taken for local plan inquiries. However, difficulties which have arisen are also acknowledged, such as the “binding” nature of reporter’s decisions being a source of concern to planning authorities, and viewed as undermining work that may have already been done with stakeholders. In order to address the challenges that have arisen in relation to development plan examinations and in the interests of promoting a plan led system, the Scottish Government has now published a consultation paper – *Development Plan Examinations Consultation 2012* – seeking views on the future approach to development plan examinations.
5. *Driving Improved Performance*: There is a recognition that the changed economic circumstances in recent years has resulted in a decline in the number of planning applications. It is noted in ‘Planning Reform – the Next Steps’ that alongside this there has been an improvement in the percentage of minor

applications determined timeously. However, one of the main points of concern at the present time is the fact that the determination rate for major applications remains poor. It is acknowledged in the document that a high quality planning service extends beyond the speed of decision making, but nonetheless “efficient handling of planning applications remains a fundamental indicator of a high quality planning service.”

6. Reference is made in a review which was carried out by Audit Scotland² to the gap between income and expenditure was becoming unsustainable. In this context, as part of a programme of planning reform the Scottish Government are minded to increase planning fees. This would however be on the basis that such increases would be inextricably linked to improvements in performance. In order to further explore the issues surrounding this proposal the consultation paper *Fees for Planning Applications* has been launched.
7. *Simplifying and streamlining* : Since 2006 significant changes have been made to the processes of dealing with planning applications, including the introduction of a hierarchy of planning applications and the introduction of more extensive schemes of delegation in most planning authorities. The formal pre-application consultation (PAC) process has also been introduced in an effort to promote greater community engagement prior to the submission of a formal planning application and also in order to achieve greater transparency about planning decisions. Alongside the measures already introduced, there remains a sense that more can be done to improve the operation of the planning system. As part of this, further consultations launched include *Miscellaneous Amendments to the Planning System* and also *General Permitted Development Order*.
8. *Delivering Development* : ‘Planning Reform – the Next Steps’ emphasises the Government’s recognition of the impact of global economic circumstances on the property sector and the difficulties faced by developers in attempting to bring developments to fruition. A variety of measures are being considered in order to alleviate some of the difficulties, including alternatives to developers paying upfront for planning obligations and revisions to Circular 1/2010 regarding Section 75 planning obligations. The measures to assist the current development situation are the subject of the current consultation on *Development Delivery*.
9. ‘Planning Reform – the Next Steps’ places emphasis on culture change in order to ensure that the planning system plays its role in delivering sustainable economic growth and supporting economic recovery. The Scottish Government wishes to “see the planning system fulfil its potential in facilitating development of the right quality in the right place.” In conjunction with the current consultation process, a programme of engagement by Scottish Government is taking place across Scotland for the six month period from March 2012, involving talking with stakeholders and identifying and establishing “best practise in efficient delivery of good quality development.” The final conclusions of the consultation process are expected to be announced in late summer.

² ‘Modernising the Planning System, 2011.

10. 'Planning Reform – the Next Steps' can be viewed in its entirety on the Scottish Government website at <http://www.scotland.gov.uk/Publications/2012/03/3467/0>

The Planning Performance Framework

11. Heads of Planning Scotland (HOPS) announced the formal launch of the new Planning Performance Framework (PPF) on April 1st 2012. The PPF has resulted from discussions and consultations undertaken by HoPS with the Scottish Government, the RTPI, COSLA, SOLACE, Improvement Service and a number of key agencies. HOPS and the Scottish Government have jointly sought to develop a new framework for measuring and reporting performance, having accepted the findings of an Audit Scotland report in 2011 on 'Modernising the Planning System.' One of the key findings in the Audit Scotland report was the fact that time³ "is only one indicator of performance and a more comprehensive performance measurement framework is needed." In order to address this, the planning performance assessment framework outlined in the PPF document (<http://www.scotland.gov.uk/Topics/Built-Environment/planning/modernising/cc/ImprovementPlans/Framework>) contains a mix of quantitative and qualitative measures. It is intended that this would represent a more comprehensive and balanced series of measures against which to measure planning performance.
12. The performance framework has already been trialled as a pilot with 5 authorities.⁴ In addition the Scottish Government and Heads of Planning Scotland have also had discussions with various stakeholder groups⁵ during 2011 and 2012. The key stakeholder groups involved in the process have formally endorsed the performance assessment framework.
13. The key component parts of the Performance Framework consist of :
- Part 1 – National headline indicators;
 - Part 2 – the performance assessment across 8 areas of agreed activity, defining and measuring a high quality planning service;
 - Part 3 – supporting evidence and links to related reports and studies;
 - Part 4 – Service Improvements and timescales for delivery of improvement
- Appendices –
- 1. Official statistics – decision making timescales;
 - 2. Workforce and financial information.

³ Time refers to the timescale set for processing planning applications.

⁴ Fife, East Lothian, Edinburgh, Aberdeen and Renfrewshire Councils.

⁵ Stakeholder groups included Homes for Scotland, Federation of Small Businesses, Scottish Property Confederation, RIAS, Planning Aid Scotland and the Royal Town Planning Institute.

CNPA Report – Part 2

**Consultation on
Fees for
Planning Applications 2012**

BACKGROUND

14. As outlined in part 1, para. 5 of this report Audit Scotland in its 2011 report 'Modernising the Planning System' identified the unsustainable gap between the levels of fees generated from planning applications and the increasing expenditure involved in processing applications. Having examined the findings, the Scottish Government is willing to increase the level of fees as a means of strengthening the resources and capabilities of planning authorities in order to achieve a high performing planning service, consistent with the aspirations of 'Planning Reform – the Next Steps.'
15. The consultation document on 'Fees for Planning Applications' can be viewed on the Scottish Government website at <http://www.scotland.gov.uk/Publications/2012/03/3164/0> . The purpose of the consultation is to seek views on draft regulations that set out a new fee structure and level for planning applications in Scotland. Respondents are expected to take account of the aims and principles which underlie the proposed new fee arrangements, which include :
 - The planning fees being more proportionate to the work involved;
 - The planning fees providing adequate resources to allow the planning authority to carry out their development management functions;
 - That the regulations are simpler and easier to administer;
 - That the regulations establish a clear link to the performance of planning authorities; and
 - That the planning service recognises and delivers public value.
16. Some of the most significant changes which are being proposed include :
 - an increase in the fee maximum to £100,000;
 - linking of fees to planning authority performance;
 - the introduction of new fee categories for retail, leisure and energy generation;
 - increases in some fees including cost of a single house,⁶ retail and leisure development and energy generation;
 - proposed revised fees to include the advertising costs associated with neighbour notification, rather than the current system of advertising fees being recouped separately from the applicant during the planning application process.
17. The following section of this report sets out the consultation issues, with reference to their implications for planning authorities in general. The questions and the suggested CNPA response will be detailed in each section. Given the existing planning powers in the Cairngorms National Park Authority in relation to the development management function, the implications for or potential benefits to the CNPA are dependent on the proportion of fee agreed on a voluntary basis between CNPA and the local authorities as the fees are paid direct to those authorities when the application is submitted.

⁶ The proposed application fee for a single house is £800.

Section 1 : Business Regulatory Impact Assessment and Equality Impact Assessment .

18. As part of the consultation process there is a need to assess the impact of the proposed development changes for those directly impacted by the regulations. A partial Business Regulatory Impact Assessment (BRIA) which details costs, benefits, and risks associated with the proposed changes is included in Section D of the consultation document, and a partial Equality Impact Assessment (EQIA) is also contained in Section D. Questions 1 – 3 of the consultation concerns BRIA's and EQIA's.

Question 1 : *Are there any costs or benefits not identified in the draft BRIA?*

Suggested CNPA response : No

Question 2 : *Do you have any information or can you suggest sources of relevant information on the cost and / or benefits detailed in the BRIA at Section C?*

Suggested CNPA response : No

Question 3 : *We would appreciate your assessment of the potential equalities impact our proposals may have on different sectors of the population. A partial EQIA is attached to this consultation at Section D for your comment and feedback.*

Suggested CNPA response : The CNPA has no additional comments.

Section 2 Linking Fees to Performance

19. The fee increases currently proposed are highly dependent upon them being linked to sustained improvements in the performance of the Scottish planning service. If necessary, Ministers are prepared to bring forward legislation in order to ensure that this inextricable link is made and to enable steps to be taken to reduce the fee levels in an authority where improved performance is not maintained. The Planning Performance Framework (PPF) spearheaded by the Heads of Planning in Scotland (and summarised in para. 10-12 of this report) will provide the foundation for assessing planning authority performance.
20. Part of the suggested process of linking fees to performance involves the potential introduction of an opportunity for developers to spread the payment of fees associated with major applications. It is suggested that this could occur in instances where a processing agreement has been signed. Processing agreements have been trialled in a number of authorities in Scotland and consist of an agreement between the planning authority, the applicant, and perhaps also statutory agencies, setting out respective commitments at various stages of the application process. For example, the applicant would undertake that the submitted application would consist of an agreed package of information, the authority and agencies would commit to assess it and make any comments within a stated period, the applicant would undertake to respond in a certain timescale, and there would be a date fixed for Committee

to determine the application. This will give the developer certainty that if they do as agreed they know when they will have a decision – there would be no commitment to a particular outcome. Staging fees in tandem with a processing agreement would allow developers to pay a percentage at the start of the application process and at an appropriate and agreed point later in the process.

Question 4 : *Do you consider that linking fees to stages within processing agreements is a good or bad idea? What should the second trigger for payment be?*

Suggested CNPA response : Generally a good idea.

The CNPA recognises that the proposed increase in fees may have a impact in the immediate term on the cashflow and budgets of developers. The suggestion of facilitating a type of phased payment of fees for major applications is recognised as being a pragmatic solution that could address impacts in the short term. The initial phase of the fee payment should be set at a sufficient level to ensure that Planning Authorities achieve sufficient fees at the outset to meet the costs of ensuring the availability of resources to efficiently deal with the major planning application as agreed with the applicant beforehand as part of the processing agreement. In the interests of clarity a minimum proportion of fee payment should be stipulated by the Scottish Government.

Issues which require further consideration : linking fees to stages within the processing of applications is reliant on the willingness of the applicant to enter into a processing agreement at the outset. How would the benefit of the phased fee payment arrangement be available to an applicant in the event that they are unwilling to engage in such an agreement?

In the event that the applicant decides not to pursue the planning application past a certain stage and chooses instead to withdraw the application prior to reaching the second payment trigger stage, what safeguards would be put in place to ensure that the applicant meets their full fee obligations?

Notwithstanding CNPA specific issues on this and other aspects of the consultation raised elsewhere in this report and in a separate covering letter, it is suggested that an appropriate stage of the planning application process to act as a 'second trigger' for the payment of the remainder of the planning fees would be at the conclusion of the consultation process i.e. at the close of the period(s) available for the receipt of all consultation responses and public representations.

21. Processing agreements are entered into with the planning authority to which the application is to be submitted. This approach will apply without any problems in all planning authorities except CNPA as we decide on a case by case basis, following submission, which applications to call in because they raise issues of significance for the aims of the National Park. Having regard to the CNPA's unique planning powers in relation to the development management function and the associated arrangements in place with the five constituent

local authorities within the National Park, it would be difficult for any of the authorities to enter into a processing agreement on major applications submitted within their jurisdiction prior to the CNPA determining whether or not the planning application would be called in for determination. Although it is highly likely in the vast majority of cases that planning applications falling within the classification of 'major applications' would be of significance to the aims of the National Park and would consequently be 'called in' for determination, the CNPA would not formally assume the function of 'Planning Authority' prior to the 'call in' of the application and it would be difficult to be a party to a processing agreement prior to that other than with the caveat that it would be dependent on the application being called in. Given the apportionment of fees with the local authorities the staged fee payments may not cover the cost of the resources required to process the application. It can all be made to work, but it will require extra effort and cost.

Section 3 – The Changes

22. This details a number of changes, although specific comment is not being sought on many of those changes. Fee changes emanating from that include :
- An increase in the fee maximum (with the maximum to be set at £100,000);
 - Changes to the method of fee calculation, in acknowledgement that a high proportion of costs relate to the processing, validation and notification of an application. There would be an increase in the fixed cost associated with either the first unit proposed or the first 100 square metres of floor space created;
 - A reduction in the fee level associated with applications made under Section 42 of the Town and Country Planning (Scotland) Act 1997, with the fees proposed to be £50 for householder applications, £250 for local applications and £500 for major applications;
 - A change in the incremental increase in floor space, from 75 square metres to 100 square metres. This is intended to have the effect of a decrease in planning fees for certain business and commercial developments, with the intention that this would support more affordable expansion and development.
23. New fee arrangements are proposed for development within Conservation Areas. As a result of the recent amendments to householder permitted development rights, applications will be required for proposals within Conservation Areas. The Scottish Government consultation suggests that only half the normal fee would be payable under certain categories within Conservation Areas⁷ (i.e. those which require applications as a result of the recent permitted development restrictions).

⁷ Categories 2,3,4 and 5.

Question 5 : *Do you agree or disagree with the proposal where applications are required because permitted development rights for dwellings in conservation areas are restricted, then a reduced fee should be payable? Agree or disagree.*

Suggested CNPA response : Agree

24. Opinions are also sought in relation to the fees payable for the renewal of planning permission. Para. 3.2.8 of the consultation document refers to the changes to the planning system in 2009 and makes reference to the duration of planning permission no longer being specified as a condition of the planning permission. Due to this, an applicant can no longer avail of a Section 42 consent⁸ to renew permissions and is instead required to submit a standard planning application which attracts full fees i.e. the same as those paid when originally applying for planning permission. The Scottish Government is now proposing that a new fee for renewal would be introduced, which would be 50% of the fee payable if it were a new consent.⁹

Question 6 : *Do you agree or disagree with the proposal that there should be a separate fee for renewals of planning permission? Agree / disagree.*

Suggested CNPA response : Agree.

Having regard to the generally straightforward nature of processing an application for the renewal of planning consent, including more limited resources expended on an application of this nature, the CNPA suggest that consideration could be given to a further reduction in the fee payable, from the 50% suggested to 30%.

In general, experience in recent years tends to suggest that sites which have been the subject of applications for the renewal of consent have necessitated this action as a result of current economic climate and difficulties experienced by mainly commercial developers in financing developments or there being insufficient market demand in the present climate. The suggested 30% fee would demonstrate a further recognition of the economic difficulties faced by many sectors and the benefits to developers would be consistent with the Scottish Government ethos of demonstrating that the planning system is open for business.

25. Opinions are sought in section 3.2.9 of the consultation document about fees for 'subsequent applications.' Current fee regulations allow for 'no fee' in instances where applications are made within 12 months of a previous refusal or withdrawal. The Scottish Government recognise that there are costs associated with dealing with any planning application, including processing, registration, validation and neighbour notification. It is proposed to introduce a fee of 50% of the normal fee for any subsequent application made within 12 months of being granted, refused or withdrawn.

⁸ Section 42 of the Town and Country (Scotland) Act 1997 refers to the determination of application to develop land without compliance with conditions previously attached.

⁹ An application to renew a lapsed consent would continue to attract a full fee.

Question 7 : *Do you agree or disagree that the new fee is set at an appropriate level? Agree / disagree.*

Suggested CNPA response : Agree - on basis that applicants engage in meaningful pre-application discussion and proceed on basis of that discussion. That being the case, the costs to the planning authority will be proportionate to the level of fee.

26. Opinions are sought in section 3.3 on the Ministers intention to make provision within the regulations for fees to increase on an annual basis in line with the retail price index (RPI).

Question 8 : *Do you agree or disagree with the proposal that the fee should increase on an annual basis? Agree or disagree*

Suggested CNPA response : Agree.

27. The proposed Table of Fees is detailed in paragraphs 35 – 69 of the consultation document. A total of 22 categories of fees are proposed. The fee structure is intended to reflect a recognition that different developments have different costs. A new fee category is proposed for retail and leisure, and also for energy generation projects. The following are the categories :

- Category 1 – Residential Development;
- Categories 2, 3, 4 and 5 – Extensions and alterations to existing dwellings;
- Category 6 – Retail and Leisure;
- Category 7 – Business and Commercial;
- Category 8 – Agricultural Buildings and Glasshouses;
- Categories 9 and 10 – Electricity Generation (Category 9 = windfarms and category 10 = other electricity generation projects);
- Category 11 – Exploratory drilling for oil and natural gas;
- Category 12 – Placing or assembly of equipment on marine waters for fish farming;
- Category 13 – Plant and Machinery;
- Category 14 – Access, Car Parks etc. for existing uses;
- Categories 15, 16 and 17 – Winning and working of minerals, peat and other operations;
- Categories 18 and 19 – Waste disposal and mineral stocking;
- Categories 20, 21 and 22 – Changes of use (Category 20 = conversion of flats and houses etc. and categories 21 and 22 = other changes of use).

28. Questions are only being posed in the consultation on a limited number of fee categories. Category 9 – Windfarms is the subject of one of the questions, Category 9 proposes to make a distinction between the fees payable for wind turbines of various hub heights. The fee structure proposed is :
- a single wind turbine < 15m = £500 fee;
 - a single wind turbine > 15m and < 50m = £1,500 fee;
 - a single wind turbine > 50m= £5,000;¹⁰
 - windfarms totalling 2 or more turbines will be charged at £500 per 0.1 ha up to a maximum of £100,000;
 - Applications for planning permission in principle will rise on an incremental basis until the maxima of £50,000 is reached.

Question 9 : *Is using site area the best method of calculating fees for windfarms of more than 2 turbines? Y/N*

If not, could you suggest an alternative? In your response please provide any evidence that supports your view.

Suggested CNPA response : Yes – but only on basis that site area is defined as the actual area affected by the turbines/associated facilities and there is no potential to draw lines tightly round each turbine. It should cover the full extent of works including access roads, the base foundations, adjacent crane hardstandings, underground/overhead cabling, borrow pits, ancillary buildings etc.

29. The final questions posed in relation to the various fee categories is of a general nature.

Question 10 : *Please list any types of developments not included within the proposed categories that you consider should be.*

Suggested CNPA response : The CNPA has no further comment.

Question 11 : *We would welcome any other views or comments you may have on the contents and provisions of the new regulations.*

Suggested CNPA response : The CNPA has a unique planning function with the National Park Authority working alongside 5 local authorities. This presents challenges in operating the planning system and meeting performance standards on the same basis as other areas in Scotland. There are concerns regarding any changes that will potentially create greater inefficiencies and we would wish to discuss this further with Scottish Government – the supporting letter to the Chief Planner sets this out in greater detail.

¹⁰ The proposed fees for single turbines of varying heights are reflective of the procedural requirements dependent on scale (for example, turbines above 15m requiring to be screened for EIA purposes) and also the significant resource input by planning authorities when dealing with applications of this nature.

CNPA Report – Part 3

**Development Delivery
Consultation 2012**

Background

30. The introductory section of this consultation document points out that development contributes to economic growth, but recognises the difficulties and challenges faced due to the current climate. Reference is made to public and private sector funding being curtailed and the associated difficulties in relation to the funding and delivery of infrastructure. The Scottish Government is proposing a range of actions in response to the situation. Stage I of the process is this current consultation on 'Development Delivery', which seeks to elicit the initial views of all sectors of the development industry in relation to current issues and opportunities for facilitating development and infrastructure provision. The Scottish Government intend that the findings would inform a second stage of consultation which would investigate the detail of potential proposals or measures to assist with development delivery.
31. The consultation document on 'Development Delivery' is divided into three sections and supporting by five annexes.

Section A – Planning context and committed actions;
Section B – Delivering development and developer contributions;
Section C – Innovative approaches to development and infrastructure delivery;
Annex I – Business and Regulatory Impact Assessment;
Annex II – Equalities Impact Assessment'
Annex III – The Scottish Government Consultation Process;
Annex IV – How to respond to this consultation;
Annex V – Respondent information form and list of questions.

(The document can be viewed in its entirety at :
<http://www.scotland.gov.uk/Publications/2012/03/3965/0>)

Section A – Planning Context and Committed Actions

32. In setting the context there is a strong recognition of the impact the global recession had on the property sector. The Scottish Government recognise that development sites are struggling to come to fruition. A range of actions are outlined which will be taken forward to strengthen the contribution that planning makes to achieving sustainable economic growth. Measures include the 'Stalled Sites Initiative,'¹¹ the forthcoming revision of Circular 1/2010 : Planning Agreements; the introduction of pilot standard templates to assist with unilateral operations; piloting a range of reforms aimed at simplifying and streamlining development consenting; and provision of a suite of resources to support all stakeholders to have a better understanding of development economics and viability issues.
33. The first question in the 'Development Delivery' consultation seeks a broad opinion on the approach.

¹¹ Intended to assist in unlocking developments delayed due to the lack of enabling infrastructure.

Question IA : *Do you think the current planning system supports or hinders the delivery of development and infrastructure?*

Strongly supports

Mostly supports

Does not influence

Mostly hinders

Strongly hinders

Don't know

Please explain why you have chosen your above answer.

Suggested CNPA response : The current planning system as it is applied by statute to the Cairngorms National Park does present a challenge, and there may be a perception that it hinders development, but the reality is that it strongly supports the delivery of development and infrastructure within the given context. It is important that the planning system is not seen in isolation, but as part of an integrated package of activity co-ordinated under the National Park Plan and working with the 5 local authorities, Cairngorms Business Partnership, Association of Cairngorms Communities, SEPA, SNH, HIE/SE and individual businesses and developers to bring forward the development that is needed for communities in the Park.

Question IB : *What additional measures could be taken to support development and infrastructure delivery ?*

Suggested CNPA response : There is an increased emphasis on early engagement and pre-application discussion when bringing forward development and CNPA is keen to support any further progress in this area that will add to certainty and speed up the formal element of decision making process. There is existing good practice, but this has to be rolled out across the development sector so that the applications that are lodged are fit for purpose with all of the necessary information as identified beforehand. Planning authorities for their part will continue to seek to be proportionate in what is asked for and proactively co-ordinate the requirements of the various agencies involved.

There is potential for specific work to be done in the combining of consents, not just in those directly related to planning, but perhaps in others such as CAR Licences. The CNPA would be happy to host a pilot scheme and work with SEPA to see if it is possible to combine CAR Licence and Planning Permission for hydro schemes. The current set up involves some duplication of the issues being considered, there is confusion for applicants in terms of which comes first, and there are difficulties in trying to progress them in tandem. A single consent for hydro schemes that embraces the issues of interest to both existing consent regimes is worth investigating and the National Park is a suitable location for a pilot.

Section B : Delivering Development and Developer Contributions

34. Paragraphs 11 – 14 of the consultation document sets out the current approach, where developer contributions towards the cost of enabling development infrastructure can be secured through various means, with the use of a Section 75 Planning Obligation being the most common. Reference is made to Circular 1/2010 : Planning Agreements which sets out the Government’s policy on the use of obligations made under Section 75.
35. Para. 16 of the consultation document alludes to difficulties arising from the negotiated nature of the S75 approach, such as uncertainty in the level of contributions to be sought for development. Reference is also made to the concerns being raised about delays in the process of agreeing contributions. As a result the Scottish Government is now seeking to gauge the extent of the issues and establish what needs to be done to address them. Question 2 of the consultation document seeks comments on the matter.

Question 2 : *How well do you think the process of seeking developer contributions through Section 75 Planning Obligations is functioning?*

Answer options :

Process functions well

Process requires MINOR changes

Process requires MAJOR changes

Section 75 Planning Obligations is not an appropriate process for securing developer contributions

Please explain why you have chosen the above answer and identify what can be done to alleviate any issues raised.

Suggested CNPA response :

The question relates solely to the use of Section 75 Planning Obligations for securing developer contributions and our response is within that context. We are aware of some of the issues faced in large development sites elsewhere in the country where there are significant contributions required for a variety of infrastructure. However, CNPA experience to date indicates that there are many planning applications which attract a limited level of developer contribution. In such instances, the potential costs involved in the preparation of a Section 75 planning obligation where it would be used solely to regulate the payment of the contributions, may be disproportionate. In such instances, the CNPA has presented the applicant with the option of engaging in this method or alternatively accepting the payment of the developer contribution prior to the release of the decision notice. The latter has generally been the preferred option and one which could be given a higher profile in any new guidance so that applicants are aware of it and choose to follow it.

36. The final element in Section B of the consultation document highlights that the emphasis of planning reform is on culture change as opposed to legislative change and in this context the Scottish Government are seeking views on what can be done within the existing legislative and policy context to enable the delivery of development.

Question 3 : *What additional measures or support could the Scottish Government undertake or provide to facilitate the provision of development and infrastructure within the current legislative framework?*

Suggested CNPA response : Scottish Government should continue with the package of measures that are being rolled out as part of the ongoing planning modernisation agenda. In particular the focus on the pre-application process should be reinforced with the emphasis that development is more likely to take place successfully if the right outcome can be arrived at in the first instance.

Section C: Innovative Approaches to Development and Infrastructure Delivery

37. The Scottish Government has been investigating the use of innovative approaches and has supported research on the subject. Reference is also made to an awareness of some Local Authorities. The Scottish Government is interested in capturing views on and details of innovative approaches to infrastructure delivery which are being considered or progressed.

Question 4 : *What innovative approaches are you aware of to facilitate development and infrastructure delivery and what are your views on their effectiveness ?*

Suggested CNPA response : In common with other authorities the CNPA is looking for innovative ways to bring forward development that communities need. This can involve, for example, considering a range of models for affordable housing delivery (e.g. Community Land Trusts, Resonance) or combining work on managing recreational impact on protected species (e.g. capercaillie) with bringing forward housing proposals. Working closely with developers, landowners and communities is essential.

38. Para's 19 and 20 of the consultation document make reference to work being undertaken on behalf of the Scottish Government to investigate the potential of Development Charges in the Scottish planning system. The suggested charges are also sometimes referred to as a 'roof tax,' 'tariff' or 'infrastructure levy.' Opinions are sought on the potential use of such charges.

Question 5 : *Would you support the introduction of a Development Charge system in Scotland to assist in the delivery of development and infrastructure? Yes / No.*

Please explain why you have chosen the above answer.

Suggested CNPA response : It is considered that it would not be appropriate, especially in the current economic climate, to introduce any measures that could be perceived as an additional tax.

Annex 1 – Business and Regulatory Impact Assessment

39. The results of this consultation will be used to inform the Business and Regulatory Impact Assessment. As part of the BRIA process the Scottish Government intend to discuss the final proposals with those directly impacted. Respondents are invited as part of this current consultation to indicate if they are willing to take part in further discussions on this.

Question 6 : *Do you have any information or can you suggest sources of relevant information on the costs and / or benefits to support the preparation of a BRIA?*

Suggested CNPA response : No

Annex 2 – Equalities Impact Assessment

40. Annex 2 sets out the public sector equality duties, with the requirements applying across the “protected characteristics” of age, disability, gender reassignment, pregnancy and maternity, race, religion and belief, sex and sexual orientation.

Question 7 : *We would appreciate your assessment of the potential equalities impact that these issues may have on different sectors of the population.*

Suggested CNPA response : The CNPA has no additional comments.

CNPA Report – Part 3
Development Plan Examinations
Consultation 2012

Background

41. The Scottish Government is consulting on the process of Development Plan Examinations that were introduced by the Planning etc. (Scotland) Act 2006. The Act introduced measures that were intended to speed up development plan preparation and to make the process as transparent as possible for the public. This included the main issues report production, standards for early engagement and consultation and also included the measures that make reporter's recommendations binding on the planning authority who prepares the development plan.
42. The rationale for the binding recommendations was that stakeholders would be more confident that their views had been fully considered in the plan making process if the plan was independently endorsed by the reporter. Previously, planning authorities could depart from the reporter's recommendations.
43. The new system has only been in place for a few years and the first development plans have only recently been through the examination process. The feedback to Scottish Government from some planning authorities has been that they are concerned by the binding nature of the reporter's recommendations. In some cases the recommendations have included additional housing sites. It has been suggested that this undermines the role of elected members and the involvement of local stakeholders who contributed to the plan making process through engagement and consultation.
44. The consultation paper suggests four options that could change or improve the system, of which all but the first option would require changes to legislation:
 1. **Improving current practice** – and encouraging reporters not to try to fix any failings in the plan themselves, but to recommend that the planning authority does so.
 2. **Greater discretion to depart from the reporter's recommendations**
 3. **Restrict the scope of the examination**
 4. **Remove the independent examination from the process**
45. The consultation paper sets out 3 questions to find views on the development plan examination process:
 1. How well do you think the examination process is functioning and should any changes be made to the process at this stage?
 2. If you think changes are needed which option do you support, and why?
 3. Are there other ways in which we might reduce the period taken to complete the plan-making process without removing stakeholder confidence?

The CNPA's proposed response:

46. The Cairngorm National Park Authority (CNPA) has no direct experience of Local Development Plan (LDP) Examination yet. However, the CNPA has recent experience Local Plan preparation and a Local Plan Inquiry under the previous system. We are also currently preparing the LDP for the Cairngorms National Park, with a main issues report consultation completed in 2011 and consultation on the proposed LPD expected in early 2013. Our response to the consultation is based on our experience of the previous system and the process of preparing the LDP for the Cairngorms National Park to date.

Question 1 : *How well do you think the examination process is functioning and should any changes to made to the process at this stage?*

Suggested CNPA response :

Given the CNPA's lack of experience of LDP examinations so far, we don't consider it appropriate to suggest changes to the new system. However there are two principles that we consider should be maintained in the current system and ensured by any future changes to it:

- The first principle is that the examination process should be independent, transparent and build confidence in the system for all stakeholders. The role of reporters is important because they help provide that confidence in the system;
- The second principle is that the system should reflect local democratic and stakeholder views, strengthening the engagement process that encourages early and active involvement of all stakeholders in LDP preparation. The CNPA agrees that it would be possible for reporters to undermine confidence in the system if their recommendations vary significantly with the planning authority's position and potentially with the position of many local stakeholders.

Question 2 : *If you think changes are needed which option do you support and why?*

Suggested CNPA response: The CNPA does not consider any of the options to necessarily provide a better situation than the status quo. We would like to see the examination process lead to a swift completion of the plan, so are not convinced by recommendations that lead to the need for planning authorities to carry out significant additional work or consultation.

Question 3 : *Are there other ways in which we might reduce the period taken to complete the plan-making process without removing stakeholder confidence?*

Suggested CNPA response : The CNPA has no additional suggestions.

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CNPA Report – Section 5
Consultation on the
General Permitted Development
Amendment Order 2012

Background

47. The Town and Country (General Permitted Development) (Scotland) Order 1992, as amended, confers permitted development rights i.e. an exemption from the need for a planning application. While permitted development rights have the benefit of avoiding unnecessary costs and delays to developments that may be minor and uncontroversial, there is the risk of inappropriate development taking place if permitted development rights are set too widely. The purpose of the current consultation is to seek views on a draft legislation for a number of refinements and amendments to the non-domestic elements of General Permitted Development Order.
48. The draft amendment order is set out in Annex I of the consultation document (also available to view on the Scottish Government website at <http://www.scotland.gov.uk/Publications/2012/03/8498/0>). It details all proposed changes in respect of non-householder developments, with the proposed changes having taken into account responses to the 2011 Consultation on the GPDO. The proposed changes aim to ensure that the permitted development rights granted by the General Permitted Development Order are proportionate and remove unnecessary applications from the planning system. Table I of the consultation sets out a Summary of the Proposals.

Table I: Summary of Proposals

Access Ramps	Class 7G - Introduce PD rights for the formation of an access ramp to any non-domestic building.
Aviation	No changes to existing Permitted Development Rights for Aviation.
Caravan Sites	Class 17 - Existing rights amended to permit formation of a hard standing.
Electric Vehicle Charging Points	Classes 7E and 7F - Introduce PD rights for installation of both freestanding and wall mounted charging points.
Harbours	It is proposed to make no changes to Permitted Development Rights for Harbours.
Hill Tracks	Classes 18, 22 and 27 - It is proposed to limit Permitted Development Rights for new hill tracks.
Industrial and Warehouse Development	Class 25 - Creation of Hard Surfaces amended. Clarified that R&D included within definition of 'industrial building'.
Institutions (Hospitals, Universities, Colleges, Schools, Nurseries, Care Homes)	Class 7C - Introduce PD rights for the extension and alteration of buildings used as Hospitals, Universities, Colleges, Schools, Nurseries, and Care Homes.
Local Authority Development	Class 33 - Financial limit for PD works increased to £250,000. Construction of flats as permitted development made possible.
Offices	Class 7D - PD rights for minor extensions of office buildings.
Open Air Markets	Class 15 - amendment to provide PD rights for temporary use as an open air market.
Pavement Cafes	Class 7H - PD rights for the provision of a pavement café.

Shops and Financial /Professional Services	Class 7A - PD rights for the extension or alteration of a shop or a financial services establishment. Class 7B - PD rights for the provision of a trolley store within the curtilage of a shop.
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49. The consultation document includes a partial Business and Regulatory Impact Assessment (BRIA) in Annex 2 and a partial Equalities Impact Assessment (EqIA) in Annex 3. In addition, the General Permitted Development Order was considered under the Environmental Assessment (Scotland) Act 2005 in order to identify if a Strategic Environmental Assessment (SEA) was required. A screening process was undertaken and it was determined that the GPDO would not have significant environmental effects and an SEA was not required. The first three questions in the consultation seek views on the BRIA and the EqIA.

Question 1 : *Are there any costs or benefits not identified in the draft BRIA?*

Suggested CNPA response : Not as far as we are aware.

Question 2 : *Do you have any information or can you suggest sources of relevant information on the costs and / or benefits detailed in the BRIA?*

Suggested CNPA response : No

Question 3 : *We would appreciate your assessment of the potential equalities impact our proposals may have on different sectors of the population.*

Suggested CNPA response : The CNPA has no further comment to offer on this. In general the proposed amendments are welcomed as a means of providing an increasingly effective planning service that will provide wider community benefits.

50. Part I of the consultation document details the proposed amendments to existing classes of permitted development in the Town and Country Planning (General Permitted Development) (Scotland) Order 1992. Amendments are proposed to a number of classes, summarised as follows :

- Class 15 : Temporary use of land – open air markets. Limited PDR is proposed for open air markets, by the omission of “open air market” from the current exclusion list in Class 15. This would permit their operation for up to 28 days in a calendar year, subject to there being a license in place;
- Class 17 : Caravan sites. Amendments are proposed to class 17 in respect of hard surface provision, allowing this as permitted development subject to it being either a porous material or that adequate provision is made to ensure that any water run-off is dealt with on-site;
- Class 18, Agriculture, Class 22 Forestry and Class 27 Repairs to private roads and ways : having taken into account the variety of views

expressed in the response to the 2011 consultation on PDR associated with private ways, the Scottish Government is now proposing the removal of Permitted Development Rights for the formation of access tracks. Classes 18 and 22 would be amended so that the formation of a new access track would require the submission of a planning application. Maintenance of the existing track would continue to be allowed as PDR subject to it being contained within the existing track boundaries. Any widening of an existing private way or works resulting in a private way being materially different from the existing private way (for example, a change in finishes) would not constitute permitted development.

Development consisting of the maintenance of a private way would **not** be permitted by either classes 18 or 22 if it falls within a number of designations :

- A site of archaeological interest;
 - A National Scenic Area;
 - A historic garden or designed landscape;
 - A battlefield;
 - A conservation area;
 - **A National Park**; or
 - A World Heritage Site.
- Part 8 Industrial and Warehouse Development – Class 25 and Class 26 : a change is proposed in the definition of ‘industrial building’ to include reference to buildings used for research and development.

Class 26 relates to the deposit of waste material resulting from an industrial process on land which was used for that purpose on 1 July 1948. The consultation is seeking views on whether that class should be retained or removed from the GPDO.

Question 4 : *Should we retain class 26? Yes / No*

If class 26 should be retained are there any changes to the controls that would strike a better balance?

Suggested CNPA response : No. The class is infrequently used by the Planning Service and appears to have been of most relevance at a historic point in time.

51. Class 33 Development by Local Authorities : a small number of changes are proposed in relation to this class. The class allows local authorities to carry out certain development in their areas. Some changes in terminology are proposed, to change ‘planning authority’ to ‘local authority’ and also to change the term ‘dwellinghouses’ to ‘residential development.’ The latter change would allow local authorities to construct flats, as well as the previously permitted dwelling houses.

52. Part (c) of Class 33 currently permits authorities to carry out works up to £100,000 as permitted development.¹² It is now proposed to amend this and increase the value of permitted works to £250,000.
53. Question 5 of the consultation response seeks general views on all of the foregoing issues.

Question 5 : With regard to the proposed amendments to existing classes :

- (a) *Is the granting of permission, and the restrictions and conditions, clear? Y/N*
(b) *Is the granting of permission, and the restrictions and conditions, reasonable? Y/N*
(c) *Will the controls strike the right balance between removing unnecessary planning applications and protecting amenity?*
(d) *Please identify and explain any changes to the controls that you think would strike a better balance?*

Suggested CNPA response :

- (a) Yes
(b) Yes, generally
(c) In general yes.

The CNPA is aware of the concerns amongst some stakeholder groups regarding the proposed amendments to Classes 18, 22 and 27 which would remove permitted development rights in relation to new access tracks (or works other than maintenance to existing tracks). Whilst the concerns raised by some stakeholders such as landowners and the forestry industry are recognised, the CNPA nonetheless consider that the amendments advocated by the Scottish Government in relation to Classes 18, 22 and 27 are to be welcomed.

Hill tracks in particular have been an issue since the Cairngorms National Park was designated. They have often been for sporting rather than agricultural or forestry purposes, despite some assertions to the contrary, and should have been the subject of planning applications. They are often poorly designed and constructed with little appreciation of the significant landscape impact that they are having and result in a large amount of staff time being committed to securing retrospective applications and remedial works to mitigate the adverse landscape impact that they have created.

The proposed PDR arrangements are clear and concise and will leave no ambiguity. The removal of PDR within the specified areas in relation to Classes 18, 22 and 27 would be of significant benefit in the context of conserving and enhancing the landscape and general environment and would stop previous random and uncontrolled, and often poorly executed track development. Notwithstanding the foregoing comments, the CNPA is firmly committed to working with landowners, the forestry industry etc. and engaging in pre-application discussions to guide appropriate development to the

¹² As long as the works do not fall within the bad neighbour category of development or involve a material change of use of buildings or land.

acceptable locations, advise on design and minimise the impact of having to apply for permission.

(d) Whilst the proposed changes to Classes 18, 22 and 27 are welcomed there are a number of additional revisions that it is considered would further simplify matters and remove all ambiguity. Classes 18 and 22 should have all reference to private ways removed other than a clear statement that they are covered by Class 27. Class 27 should state that all tracks/private ways require planning permission and should be revised to refer to “repair” rather than “maintenance” – the latter covers a range of activity that is not development (e.g. clearing a culvert) whereas “repair” involves carrying out works that can be reasonably permitted in many areas (within the stated parameters), but should not be permitted in National Parks or NSAs. It is also considered that Class 8 requires revision to ensure it is not used as a loophole following the proposed changes to Classes 18, 22 and 27 – it is clearly intended to allow access junctions to be made onto non-classified roads and not to allow access tracks or private ways to be formed: the wording requires revision to reflect this intent. Finally Class 22 requires revision to bring the current NSA restrictions on agricultural buildings into the GPDO and apply them to National Parks so that all agricultural buildings over 12 metres in height require planning permission.

54. Part 2 of the consultation on the General Permitted Development Amendment Order concerns ‘Proposed New Classes of Permitted Development.’ The proposed new classes are intended to introduce new permitted development rights in a number of areas where planning controls add little value. They have been the subject of previous consultation and were generally strongly supported.
55. Classes 7E and 7F Electric vehicle charging points : Class 7E would allow the mounting of an electrical outlet on an external wall for the re-charging of electric vehicles off street. Class 7F would allow an upstand for mounting an electric charging point and feeder pillar within an outdoor off street parking area. Details would also be included in each of the classes regarding size, position relative to the road etc..
56. It is also proposed that development in either class would not be permitted if it within:
- A site of archaeological interest;
 - A National Scenic Area;
 - A historic garden or designed landscape;
 - A battlefield;
 - A conservation area;
 - **A National Park**; or
 - A World Heritage Site.

Question 6 : *With regard to the proposed new classes 7E and 7F :*

- (a)** *Is the granting of permission, and the restrictions and conditions, clear? Y/N*
- (b)** *Is the granting of permission, and the restrictions and conditions, reasonable? Y/N*
- (c)** *Will the controls strike the right balance between removing unnecessary planning application and protecting amenity? Y/N*
- (d)** *Please identify and explain any changes to the controls that you think would strike a better balance?*

Suggested CNPA response :

- (a)** Yes
- (b)** Yes with caveat in d) below.
- (c)** Yes with caveat in d) below.
- (d)** Given the minor nature of electric vehicle charging points, their installation in large landscape areas such as a National Park or a National Scenic Area is unlikely to raise issues which would warrant consideration in a formal planning application. It is therefore suggested that those two exceptions would be omitted from the list of areas in which planning applications would be required for electric vehicle charging points. It is also considered that the stated volume of the outlet in 7E should be 0.05m rather than the stated 0.5m as this will better reflect the actual size of these installations - this may have been a drafting error in the consultation document? Also remove 2 b) which states permission is required if it will face onto and be within 2 metres of a road – by definition these facilities need to face a road unless in a car park. Remove (4) as name plates will be covered by Advertisement Regulations. Similarly for 7F but reduce height above which permission is required from 1.6m to 1.4m and give maximum width/depth of 30cm.

- 57. Class 7A and 7B – Extension of a shop, financial or professional services establishment and provision of free standing trolley stores : Class 7A would introduce permitted development rights for the extension or alteration of commercial buildings¹³ but does not extend to shopping centre. Permitted development rights would only apply within Class 7A subject to meeting size restrictions (the extension or alteration should not exceed the gross floor space of the original building by either 25% or 100 square metres – whichever is the lesser). PDR would also not apply if the extension was closer than 10 metres of the curtilage boundary, would result in the loss of parking or turning space, extend beyond or alter the existing shopfront, or include a balcony, veranda or raised platform.
- 58. Class 7B proposed to introduce permitted development rights for the provision of free standing trolley stores within the curtilage of a retail site, subject to compliance with a number of provisions, including not exceeding 20 square metres floor area and 2.5 metres in height and not being located within 20 metres of any boundary with a residential property.

¹³ Within Classes 1 and 2 of the Use Classes Order.

59. It is also proposed that development under Class 7A would not apply within the same list of designated areas, as detailed in para. 61 above, and which includes National Parks. Question no. 7 of the consultation seeks views on the provisions of Classes 7A and 7B.

Question 7 : *With regard to the proposed new classes 7A and 7B :*

- (a) *Is the granting of permission, and the restrictions and conditions, clear? Y/N*
(b) *Is the granting of permission, and the restrictions and conditions, reasonable? Y/N*
(c) *Will the controls strike the right balance between removing unnecessary planning application and protecting amenity? Y/N*
(d) *Please identify and explain any changes to the controls that you think would strike a better balance?*

Suggested CNPA response :

- (a) Yes
(b) Yes
(c) Yes
(d) The CNPA generally welcome the proposals in Classes 7A and 7B, and consider that they will be particularly beneficial to many small businesses which require extensions to their premises. The ability to undertake alterations or extensions without the need for a planning application would be of assistance in the efficient delivery of the business expansion. This would be entirely consistent with the current national ethos in which efforts are focused on assisting economic recovery.

Having regard to the criteria that must be complied with in order to benefit from permitted development rights under Class 7A or 7B, it is suggested that they are adequate to ensure that development under these classes would not adversely impact on the surroundings. As such the CNPA suggest that there is no need to remove the benefit of permitted development rights under Classes 7A from National Parks or National Scenic Areas. To retain such a restriction in the proposed Amendment Order would unfairly penalise business operators in such designated areas. The CNPA agree with the remainder of exclusions proposed, including Conservation Areas. The expansion of commercial developments within smaller scale designated sites may have the potential to adversely impact on the particular qualities, usually of a cultural nature, for which many of those areas were designated. As such it is prudent to ensure that proposals within such sites / areas would remain the subject of consideration through the submission of a planning application.

60. Class 7C – Extension or alteration of hospitals, universities, colleges, schools and nursing or care homes : Under this proposed class, the buildings detailed could undertake alterations or an extension as permitted development. Similar to the size restriction proposed for commercial structures in Classes 7A and 7B, extensions or alterations in Class 7C could not exceed the gross floor area of the original building by 25% or 100 square metres (whichever is the lesser). A height restriction would also be imposed.¹⁴ Other criteria, similar to those in the previous classes (such as proximity to boundaries, prohibition on loss of

¹⁴ The height would not be more than 4 metres.

parking or turning space) would also apply. In addition, it is also proposed that the benefit of permitted development rights under Class 7C would not apply within a number of designated areas, which again includes National Parks.

Question 8 : *With regard to the proposed new class 7C :*

- (a) Is the granting of permission, and the restrictions and conditions, clear? Y/N*
- (b) Is the granting of permission, and the restrictions and conditions, reasonable? Y/N*
- (c) Will the controls strike the right balance between removing unnecessary planning application and protecting amenity? Y/N*
- (d) Please identify and explain any changes to the controls that you think would strike a better balance?*

Suggested CNPA response :

- (a)** Yes, generally. Given that the buildings listed in Class 7C are often in public management, it would be useful to provide clarification as to whether or not class 7C is intended to apply to both public and private buildings.
- (b)** Yes
- (c)** Yes
- (d)** Where any of the buildings listed in Class 7C exist within a National Park or National Scenic Area, their existing presence is unlikely to be considered to adversely impact on such areas. Neither would alterations or extensions within the general parameters set out in Class 7C be likely to give rise to impacts which would warrant formal consideration through the submission of a planning application. It is therefore suggested that Class 7C would apply within National Parks and National Scenic Areas and that those designations be omitted from the list of designations within which PDR would not apply.

It is also suggested that further detail could be included within the proposed provisions of Class 7C to ensure that alterations or extensions would achieve compatibility with the existing structure. For example, a requirement that all external finishes, and the detailing of architectural features are all compatible with the existing structure.

61. Class 7D – Extension to offices : Extensions or alterations to offices could be undertaken subject to the gross floor space of the original building not being exceeded by either 25% or 100 square metres (whichever is the lesser) and subject to height restrictions,¹⁵ proximity from boundaries and no loss of parking or turning areas. As with all of the previously detailed new classes, it is proposed that permitted development rights under Class 7D would not apply in a number of designated areas, including National Parks and National Scenic Areas. Question 9 of the consultation document seeks views on proposed Class 7D.

¹⁵ 4 metres.

Question 9 : *With regard to the proposed new class 7D :*

- (a) Is the granting of permission, and the restrictions and conditions, clear? Y/N*
- (b) Is the granting of permission, and the restrictions and conditions, reasonable? Y/N*
- (c) Will the controls strike the right balance between removing unnecessary planning application and protecting amenity? Y/N*
- (d) Please identify and explain any changes to the controls that you think would strike a better balance?*

Suggested CNPA response :

- (a)** Yes
- (b)** Yes
- (c)** Yes
- (d)** Having regard to the criteria that must be complied with in order to benefit from permitted development rights under Class 7D, it is suggested that they are adequate to ensure that development under these classes would not adversely impact on the surroundings. As such the CNPA suggest that there is no need to remove the benefit of permitted development rights under Class 7D from National Parks or National Scenic Areas. To retain such a restriction in the proposed Amendment Order would unfairly restrict operators of offices in such designated areas.

It is also suggested that further detail could be included within the proposed provisions of Class 7D to ensure that alterations or extensions would achieve compatibility with the existing structure. For example, a requirement that all external finishes, and the detailing of architectural features are all compatible with the existing structure.

62. Class 7H – Use of land for the provision of a pavement cafe : Permitted development rights under this category would only apply to land adjoining premises within class 3 (Food and Drink) of the Town and Country Planning (Use Classes) (Scotland) Order 1997. A number of limitations are included on the proposed class, which are intended to protect residential amenity, and to ensure pedestrian and road safety, and ensure pavements remain accessible to all. Consequently use of land for the provision of a pavement cafe would not have the benefit of permitted development rights if :

- Equipment and furniture is incapable of being removed when the premises is closed;
- The pavement cafe is not associated with the immediately adjoining existing premises within Class 3 (Food and Drink);
- The distance between the outside of the cafe area and the edge of the nearest roadway would be less than 3 metres;
- The cafe area projected more than 4 metres beyond the frontage of the premises;
- The pavement cafe would extend beyond the width of the frontage of the main property; or
- The cafe was not located directly in front of and visible from the main premises.

Opinions are sought in question 10 in respect of the use of land as a pavement cafe.

Question 10 : *With regard to the proposed new class 7H :*

- (a) Is the granting of permission, and the restrictions and conditions, clear? Y/N*
- (b) Is the granting of permission, and the restrictions and conditions, reasonable? Y/N*
- (c) Will the controls strike the right balance between removing unnecessary planning application and protecting amenity? Y/N*
- (d) Please identify and explain any changes to the controls that you think would strike a better balance?*

Suggested CNPA response :

- (a)** Yes
- (b)** Yes
- (c)** Yes – the stipulations offer a sufficient degree of protection of the amenity of surrounding properties.
- (d)** No further suggestions. The CNPA generally welcome the provisions of Class 7H and consider that it will be of benefit in the National Park, where the economy heavily relies on the tourism and service sector. The ability to use land, in the circumstances stipulated in Class 7H, for the provision of pavement cafes has the potential to assist in the economic development of the area.

63. Class 7G – Erection, construction or alteration of an access ramp : This proposed class sets out the permitted development rights which would allow access ramps to be erected outside an external door of a non-domestic building. Scottish Building Standards require ramps from a safety point of view and provide guidance on specifications such as gradient and ramp length. Class 7G would reflect those standards. There are a number of instances in which development would not be permitted, including where the combined length of flights forming part of ramps would be more than 5 metres, the combined length of flights and platforms would be more than 9 metres, or any part of the ramp would be more than 0.3 metres high.

64. Class 7G also proposed that the development of access ramps would also not be benefit from permitted development rights in the event that it is within one of a number of designated sites / areas, which include a National Scenic Area or National Park. Question 11 seeks views on the proposed new class 7G.

Question 11 : *With regard to the proposed new class 7G :*

- (a) Is the granting of permission, and the restrictions and conditions, clear? Y/N*
- (b) Is the granting of permission, and the restrictions and conditions, reasonable? Y/N*
- (c) Will the controls strike the right balance between removing unnecessary planning application and protecting amenity? Y/N*
- (d) Please identify and explain any changes to the controls that you think would strike a better balance?*

Suggested CNPA response :

- (a)** Yes
- (b)** Yes
- (c)** Yes
- (d)** Subject to compliance with the stipulated criteria regarding ramp length and height, the erection, construction or alteration of an access ramp at any property in a National Park or National Scenic Area is generally considered acceptable and would not adversely affect the special qualities or character of those designated areas. Inclusion is a priority in the National Park and we would not like to see measures that make the provision of access to buildings/premises more difficult than in other areas. It is therefore recommended that National Parks and National Scenic Areas should be omitted from the list of sites / areas in which permitted development rights under Class 7G would not apply.

CNPA Report – Section 6

**Consultation on
Miscellaneous Amendments to the
Planning System 2012**

Background

65. The purpose of this consultation on Miscellaneous Amendments to the Planning System is to seek views on draft legislation for a number of refinements and amendments to the procedures on development management, schemes of delegation, local reviews and appeals. The proposed changes have arisen out of a review which the Scottish Government conducted in October 2010 on the first 12 months of the modernised planning system.
66. The changes are summarised in the consultation document, and are set out in draft Scottish Statutory Instruments set out in the Annexes to the paper (<http://www.scotland.gov.uk/Publications/2012/03/5577/0>). It is expected that the Scottish Statutory Instruments would be in parliament in autumn 2012. A circular will also be produced to accompany the new regulations when they come into force.
67. Including the introduction, the consultation paper is set out in eight sections and a total of twelve questions are posed in relation to these. A partial Business Regulatory Impact Assessment (BRIA) and a partial Equality Impact Assessment (EqIA) are included in the Annexes attached to the document. As with all of the foregoing consultations, the first three questions posed in the consultation document relate to the BRIA and the EqIA.

Question 1 : *Are there any costs or benefits not identified in the draft BRIA?*

Suggested CNPA response : Not as far as we are aware.

Question 2 : *Do you have any information or can you suggest sources of relevant information on the costs and / or benefits detailed in the BRIA?*

Suggested CNPA response : No

Question 3 : *We would appreciate your assessment of the potential equalities impact our proposals may have on different sectors of the population.*

Suggested CNPA response : The CNPA has no additional comments to offer on this.

Section 3 – Statutory Pre-Application Requirements and Applications to Change Planning Conditions

68. At present the existing legislation requires Section 42 planning application i.e. those used to make amendments to existing planning permissions by seeking changes to or removal of planning conditions, to comply with all normal requirements for Pre-Application Consultations (PAC) processes. Regardless of how minor a change is sought to the conditions of the previous permission, all of the requirements of the formal PAC process must be fulfilled, including the 12 week period of consultation prior to the submission of a planning application and the holding of public events during that time to inform the public about the proposals.

69. In response to concerns raised in the 2010 Consultation, referred to in para. 72, about the much of the PAC requirements being disproportionate to amendments proposed through a Section 42 application, the Scottish Government propose to remove PAC requirements for such applications, and consider that this is a “pragmatic, proportionate and simple solution.” The point is also made in the current consultation document that the opportunity would remain for public comment through the planning application process, with the planning authority giving due consideration to such comments. It is proposed to alter Section 35A of the 1997 Act to exclude Section 42 applications from the requirements for PAC. The legislative changes are not proposed to apply to applications for planning permission incorporating changes (other than to the conditions) for existing permissions for major and national developments. Changes of that nature would by definition be material changes to the development which was previously granted planning permission.

Question 4 : *Do you agree or disagree with the proposed removal of PAC requirements in relation to Section 42 applications? Please explain why.*

Suggested CNPA response : Agree

The CNPA agree that the solution proposed is pragmatic and straightforward and adequate provisions remain for the concerns of the general public to be raised and taken into account in the course of a Section 42 application. Based on our experience to date in the Cairngorms National Park, Section 42 applications have been of limited numbers and the amendments sought to conditions have generally not been of a nature which tended to give rise to interest from the general public. If, following this consultation, Scottish Government intends to pursue another alternative solution (e.g. a pre-application screening mechanism as previously suggested by some authorities), the CNPA would ask to be involved as there could be practical implications to be addressed given the arrangement of planning powers in the National Park.

Section 4 – Neighbour Notification and Advertising of Planning Applications

70. A number of changes to the requirements for neighbour notification and advertising of planning applications were suggested in the 2010 consultation, with the intention that the changes would further assist in streamlining the planning process by reducing the number of instances in which a planning application would require to be advertised. The consultation responses at that time were generally supportive of the approach, although some concerns were also expressed about loss of publicity and whether or not a single charge or a planning fees adjustment would cover advertising costs. Having considered all of the issues raised the Scottish Government are now proposing to amend the current requirements, so that
- (a) Advertising is not required where neighbouring land is a road or a private means of access to land; or land with no premises which is owned by either the applicant or the planning authority;

- (b) Advertising is not required where the proposal is for householder development and there is no premises on the adjacent land; and
 - (c) The costs of advertising will be met from fee income (with the fee amendments outlined in the Consultation on Fees for Planning Applications) rather than the current approach which involves a separate charging regime for advertising.
71. Having regard to the Scottish Government's emphasis on a plan led system, it has been concluded that the requirement to advertise development plan departures should remain. The requirements to publish notices for various other planning issues, such as environmental impact assessment, stages in the development plan process and specialist consents,¹⁶ would all continue to remain applicable.

Question 5 : *Do you think the proposed changes to advertising requirements are appropriate or inappropriate?*

Please give reasons for your answers.

Suggested CNPA response : The proposed changes are considered appropriate. They would be of overall assistance in improving the efficiency of the planning process. The proposals would be of benefit in reducing the planning authority's administrative resources in recovering advertising costs.

Question 6 : *Are there further changes to requirements or the use of advertising in planning which should be considered? Y/N*

Please give reasons and evidence to support your answer.

Suggested CNPA response : Yes. Although the proposed removal of certain advertising requirements are entirely reasonable and will be of benefit in reducing costs associated with the processing of planning applications, it is likely that a reduction in the extent of advertising of certain types of development could be considered as the loss of a potential opportunity to engage the public in the process.

A cost effective requirement to ensure that interested parties are aware of development proposals would be the introduction of site notices on the relevant site, of a specified form, with the applicant being required to erect the notice to coincide with the submission of a planning application and thereafter being obliged to maintain it in position for the duration of the period available for public comment (a minimum of 21 days). The site notice system for all development proposals is in use in other European countries and has proved to be more effective than other forms of advertising, in capturing the attention and encouraging public engagement in the planning application process.

¹⁶ For example Listed Building Consent, Conservation Area Consent, Advertising Consent and Hazardous Substances Consent.

Section 6 – Delegation of Planning Authority Interest Cases

72. In 2009 procedures were introduced which facilitated appeals of delegated decisions to be made to a Local Review Body¹⁷ and not the Directorate for Planning and Environmental Appeals. However, the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008 prevents the delegation of applications in which the planning authority has an interest¹⁸ or which have been made by Members of the planning authority. Some of the difficulties which have been identified with this procedure are detailed in paragraphs 28 and 29 of the consultation document and includes reference to applications for relatively minor application which would otherwise be delegated to an appointed officer for decision, have encountered delays as such applications must be referred to Committee for decision.¹⁹
73. Having considered the impacts of the procedures introduced in 2009, the Scottish Government now propose to remove the requirement to include a restriction on delegation in relation to local developments. Consequently where a planning authority wishes to remove a restriction from its scheme of delegation, this could be achieved through the preparation of a new scheme of delegation under Section 43A of the 1997 Act.

Question 7 : *Do you agree or disagree with the proposed removal of the restrictions on the delegation of planning authority interest cases?
If you disagree please give your reasons.*

Suggested CNPA response : Agree although this will not directly affect CNPA. The proposals would appear to be of benefit to the majority of planning authorities as it would allow for a more efficient handling of local development applications in which the local authority / its Members have an interest. However, due to the unique planning circumstances and the limited development management planning powers which exist in the CNPA, which includes the no requirement for a scheme of delegation and associated appeal mechanisms to Local Review Bodies, the proposals would not have any impact on the development management processes within the CNPA.

Section 7 – Amendments to Local Review Procedures

74. There are two matters raised in this section. The first concerns the process whereby an applicant agrees to extends the period for determination of applications for local development. Under the 1997 Act, an applicant is entitled to appeal to Ministers where a planning application was not determined within the period set out in the regulations or “within such

¹⁷ Local Review Bodies are made up of members of the planning authority.

¹⁸ As applicant, or owner of or having a financial interest in the land to be developed.

¹⁹ Para. 29 of the consultation document refers to research which was carried out over a period of 11 months, in which it was found that amongst the 22 authorities who responded, evidence suggests that 83% of the such applications were of a nature which would otherwise have been delegated to an officer for decision.

extended period as may be at any time be agreed upon in writing between the applicant and the planning authority.”²⁰

75. At present there is no similar provision to agree an extension of the time period in relation to cases to which the Local Review Body procedure would apply. In such cases the applicant would need to seek local review within three months of the end of the prescribed two month period or would otherwise lose the ability to seek a local review on the grounds of non determination. It is suggested in para. 34 of the consultation document that “applicants may therefore feel pressed to seek such a local review rather than risk losing that right by waiting even a short additional period for the officer’s decision.” In response to having identified this issue, it is now proposed to amend section 43A(8) of the 1997 Act so that local reviews on the grounds of non-determination can be sought after the prescribed two month period or crucially after any extended period which may be agreed in writing between the applicant and the appointed person.

Question 8 : *This section proposed a change to allow an extended period for the determination of an application to be agreed upon between the applicant and appointed person where local review procedures would apply. Do you agree or disagree with this change?*

Please explain your view.

Suggested CNPA response : Agree.

The CNPA is not in a position to offer more detailed comment, in light of the lack of experience in dealing with the procedures detailed, due to the unique and limited development management planning powers which pertain to the CNPA, in which there are no schemes of delegation or a Local Review Body in place.

76. The second issue considered in section 7 of the consultation document pertains to an automatic deemed refusal on certain local review cases. The legislation currently requires that a local review case, where the appeal is against non-determination, is determined within 2 months. In the event that this timescale has not been met the planning application is automatically deemed to be refused and the Local Review Body has no power to make a further decision beyond this stage. In such circumstances, the only options for an applicant to progress matters would be either to appeal to Scottish Ministers against the deemed refusal or make a new application for the proposal. In order to address the matter, the Scottish Government propose to extend the period for determination of local reviews sought on the grounds of non determination of the application to three months.

²⁰ The agreement has the effect of postponing the applicant’s entitlements to appeal on the grounds of non determination.”

Question 9 : *Do you agree or disagree with this change to the time period on determining local reviews ought on the grounds of non-determination?*

Please explain this view.

Suggested CNPA response : Agree

The proposal would appear to provide a reasonable timescale in which to allow the Local Review Body to make a decision. The extension of the time period appears to have the potential to address the challenges of time constraints which may be experienced in authorities where there are high numbers of applications and may perhaps have only one Local Review Body.

The CNPA is not in a position to offer further detailed views, in light of the Authority's lack of experience in dealing with the procedures detailed, due to the unique and limited development management planning powers which pertain to the CNPA.

Section 8 – Amendments to the Appeals Regulations

77. The Appeals Regulations at present do not make provision for the Scottish Government reporter considering a case to ask for the submission of relatively minor pieces of information which might be needed to assist in progressing the case, but would not constitute new evidence. The Scottish Government proposes to make an amendment to the Appeals Regulations to allow the reporter to judge whether a fair and transparent process requires such requests for minor pieces of additional information to be the subject of the full procedural requirements of the Regulations i.e. a full range of circulation and gathering of comments on the additional information, from all relevant parties. The proposed change would also relate to appeals for enforcement notices, certificates of lawful use of development, listed building consent, and conservation consent.

Question 10 : *Do you agree or disagree with this change to the Appeals Regulations on procedure regarding minor additional information?*

Suggested CNPA response : Generally agree – providing the reporter with the ability to request additional minor information is likely to be of benefit to the processing of the appeal case. The proposals build in a satisfactory safeguard to trigger appropriate circulation of the information received where the reporter considers this to be appropriate in the interests of a fair and transparent process. In the event that there is any potential disagreement between relevant parties on the materiality and significance of the additional information, this could be brought to light in the course of a process of circulating and gathering comments.

Section 9 – Other Issues

78. This section concerns planning applications for Approval of Matters Specified in Conditions (AMSC). Since 2009 the conditions attached to a planning permission in principle²¹ which require the further approval of the planning authority for some detailed aspects of the development, require an application under regulation 12 of the Development Management Regulations i.e. an application for Approval of Matters Specified in Conditions. All AMSC applications currently require notification, advertising in a local paper where necessary and are subject to requirements on formal decision notices.
79. Reference is made in para. 46 of the consultation document to concerns which have been raised about the AMSC process, in which it has been described as ‘excessive’ and in accordance with Schemes of Delegation in many planning authorities may give rise to objections triggering the referral of AMSC applications to committee, even in instances where those applications may be the subject of purely technical issues.²² Reference is also made to the contrasting process which existed prior to the implementation of the new regulations in 2009 where in relation to outline planning permission, only conditions relating to ‘reserved matters’²³ were subject to formal processing. Other matters specified in conditions could previously have been dealt with by the exchange of letters. The consultation document seeks opinions on the situation pertaining to Approval of Matters Specified in Conditions.

Question 11 : *Do you think the current requirements on applications for approval of matters specified in conditions on planning permission in principle is excessive? Y/N Please explain your views, citing examples as appropriate.*

Suggested CNPA response : Yes

The CNPA considers the current arrangements on matters specified in conditions on planning permission in principle is excessive. As alluded to in para. 46 of the consultation document, the requirements which came into effect in 2009 can give rise to AMSC applications to deal with technical issues, which would otherwise have been the subject of written agreement with the Planning Authority. The technical issues are generally not of a nature which would alter the principle of the development or give rise to impacts on others. They are matters which require to be agreed with authority, having been considered by a relevant technical officer. Agreeing a range of technical matters through the formal mechanism of an application for Approval of Matters Specified in Conditions is excessive and it does not generally benefit from wider public input.

Question 12 : *Are there any issues in this consultation not covered by a specific question or any other aspect of the current planning legislation on which you would like to comment? If so, please elaborate.*

Suggested CNPA response : The CNPA has no further matters to raise.

²¹ Previously referred to as ‘outline permission.’

²² Archaeological surveys is used as an example of a technical issue which may be the subject of an AMSC application.

²³ Examples include design and location of buildings, access arrangements and landscaping.

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