

## CAIRNGORMS NATIONAL PARK AUTHORITY

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**Title:** CODE OF CONDUCT/CONFLICTS OF INTEREST

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### **Purpose**

To update and advise the Committee on the recent interpretation of the extant guidance from the Standards Commission (including its general dispensation to Councillors who are members of other public bodies), which results in Councillors on the CNPA Board being debarred from participating in the determination by their own Council of any planning application on which the CNPA has offered comments.

### **Recommendations**

1. That the Committee agree to the proposed course of action for sorting out the current anomalies in the guidance for Councillors/CNPA board members in respect of planning discussions in the CNPA, and in particular:
  - Agree the proposed additions to the CNPA Members' Code of Conduct;
  - Agree the proposal that the Dispensation to Councillors from the Standards Commission should be urgently amended (and that we offer the wording as set out, but recognise the Commission may propose an alternative);
2. That until the current anomalies have been sorted out, the Committee does not offer comments on planning applications which it has not called-in.

### **Executive Summary**

Councillors who are also members of other public bodies benefit from a general dispensation issued by the Standards Commission - this enables them to participate in discussions within their own Council which are connected with activities by other bodies, of which they are also a member. It has recently come to light that this general dispensation is deficient in that it results in Councillors who are also on the CNPA being debarred from participating in their council's determination of a planning application if the CNPA has given comments on the application – as things stand, this applies even if the Councillor has withdrawn from the CNPA discussion on the comments. This paper sets out the proposals for rectifying the situation, to ensure that if Councillors do withdraw from such CNPA discussions, they may then take part in their Council's discussions on the determination.

## Background

1. Councillors who are on Boards of other public bodies are covered by two Codes of Conduct – that for Councillors and that for the other Public Body. The Code of Conduct for Councillors would, other things being equal, have resulted in Councillors being debarred from discussion in their Council on matters which in some way related to other body, on the basis that there would be a conflict of interest. However, recognising that many Councillors would also be members of other public bodies, the Standards Commission issued a general dispensation last April.
2. However, a recent legal opinion revealed that the general dispensation does not extend to discussions on matters of “a quasi-judicial nature...or where the body in question is making an objection or representation concerning such a consent or approval...”. The conclusion is that if the CNPA makes comments to a Council on a planning application (which by definition the CNPA has not called-in), then those CNPA members who are also members of the relevant Council will be precluded from the Council’s determination of the application – whether or not they have been part of the CNPA’s discussion/decision on those comments.

## Analysis

3. This situation is clearly anomalous, and arises mainly because the unique planning powers of the CNPA had not been factored into the formulation of the Standards Commission guidance (done before the CNPA existed, and well before it had started exercising its planning function).
4. At a meeting on 18 February of officers, it was accepted by all parties (Standards Commission, CNPA, Scottish Executive, Highland Council and Aberdeenshire Council) that this anomalous situation needed to be rectified with some urgency . It was recognised that the position had been highlighted by the recent housing application at Carrbridge, made before the 1 September (and therefore one which the CNPA could not have called in). The CNPA had offered comments, in response to a request from Highland Council. Only subsequently when the anomaly was discovered did it become clear that the effect was to debar the majority of the members of the Highland Council local area planning committee from participating in the determination because they were members of the CNPA – the fact that they had expressly withdrawn from the CNPA discussion on the comments did not alter this position.
5. This potential conflict of interest applies more widely – it applies in reverse when the CNPA calls in an application and a constituent Council makes comments; it also applies when the CNPA calls in an application, and another public body (some of whose members sit on the CNPA) makes comments.
6. A full consideration of the issue of conflicts of interest for CNPA members who also sit on other bodies or local councils was set out in the recent guidance for Members from Denis Munro (attached at Annex A), which was sent to the Standards Commission in early February seeking their approval. In short, this guidance sets out a

logical and defensible position on how Members should judge whether they have a conflict of interest on planning issues. It considers three situations:

Decisions on Call-in: no particular conflicts for CNPA Members arising simply as a result of their being members of constituent Local Councils;

Determinations: again no particular conflict (aside from the obvious conflicts arising from a direct personal interest), provided any CNPA member who was a Councillor had not played a part in deciding any comments issued by that Council to the CNPA;

Comments: The fact of being a councillor should not of itself preclude a CNPA member from taking part in a discussion on comments being made to a Council on an application not called-in, but such a Member should withdraw from any CNPA discussion on comments if they wished to be free to take part in the Council's subsequent determination of the application.

7. The logic in all these situations is that an individual must go to any discussion to determine a planning application with an open mind, not having pre-judged the matter. It follows that a member could take part in a discussion on comments, but not in any subsequent discussion on the determination; similarly, they could withdraw from the discussion on comments and remain free to take part in the discussion on the determination. This applies both ways round – CNPA commenting to a local council, or vice versa.
8. Consistent with this logic, if comments have been made only at official level, with no Member involvement, that Member has no conflict of interest and should be free (assuming no other conflicts of interest at a personal level) to participate in the determination. (Note: although there is some debate over whether or not the legislation allows for the CNPA to delegate comments to officers, even if this were clarified such that delegation were allowable, this would not completely resolve the current position, as there could still be cases where the CNPA Board would want/need to consider the nature of comments being made.)
9. A two-pronged solution is proposed, as agreed at the meeting with the Standards Commission on 18 February):
10. First, an amendment is needed to the Standards Commission guidance/general dispensation to Councillors. We have proposed the following wording: “ *In relation to any matter of a quasi-judicial nature, a councillor who sits on more than one committee with responsibility for that function may express an opinion and participate in a vote on only one of those committees. It is a matter for the individual judgement of the councillor to decide where to exercise that right.*”
11. Second, we propose adding a new paragraph (after the current paragraph 7.10) to the CNPA draft Code of Conduct, which encapsulates Denis Munro's recent guidance, as follows:

*There are essentially three types of discussion which members of the CNPA Planning Committee will be involved in, and on which they need to consider potential conflicts of interest:*

- a) Call-In Decisions: *You need only declare an interest where you have a financial interest in the application, the proposal might affect your home environment, or the applicant is a friend, relative or business associate, with the test in these cases being whether an informed, independent person knowing the facts would be likely to conclude that the connection is sufficiently close to perhaps affect your impartiality. In all other circumstance there should be no need to make a declaration. A decision to call-in or not should not bear on the merits of the case, and therefore a CNPA member who is also a Councillor does not automatically preclude his/her participation in a subsequent determination by their Council.*
- b) Determinations: *You should declare an interest if :*
- *you have the “friends, relatives, financial interest or business association” connection referred to above, or if the proposed development has such a direct bearing on your home that it might be held to affect your impartiality.*
  - *you have participated in an official (or non-official) discussion at which a conclusion, involving you, was reached on the matter at hand.*
  - *Your views on what the planning decision should be have already been expressed e.g. to the applicant, objectors, community councils, the press, or in any way which would lay you open to the criticism that you had come to the Planning Committee with a pre-conceived opinion.*
- c) Comments: *The CNPA may make comments on a planning application which it does not call-in. If you are a councillor, and intend to participate in the Council’s determination of the application, you should declare an interest to the CNPA Planning Committee which is considering comments, and take no part in that discussion. Alternatively, you may take part in the discussion on comments, but must then take no part in the Council’s determination. If you are a member of another body which offers comments to the CNPA on an application, provided you played no part in the formulation of those comments (e.g. because they were made by officials) then you need not declare an interest.*

## **Immediate Consequences**

12. These changes to both Code and Standards Commission guidance must be agreed by the Standards Commission, and even though we have made clear the urgency, may take a few weeks. In the meantime, until the situation is resolved, we advise that the CNPA should not offer any comments on cases which have not been called in. Further, until the situation is resolved, we should not offer comments on the case of the Braemar dry ski slope (being dealt with by Aberdeenshire because the application predates 1 September, but the Council have asked for our comments).

**Denis Munro/ Jane Hope**  
**20 February 2004**