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## CAIRNGORMS NATIONAL PARK AUTHORITY

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**Title:** CONSULTATION REPORT: CNPA RESPONSE TO HIGHLAND COUNCIL ON PLANNING APPLICATION REF NO. 07/00117/FULBS

**Prepared by:** MARY GRIER, PLANNING OFFICER,  
(DEVELOPMENT MANAGEMENT)

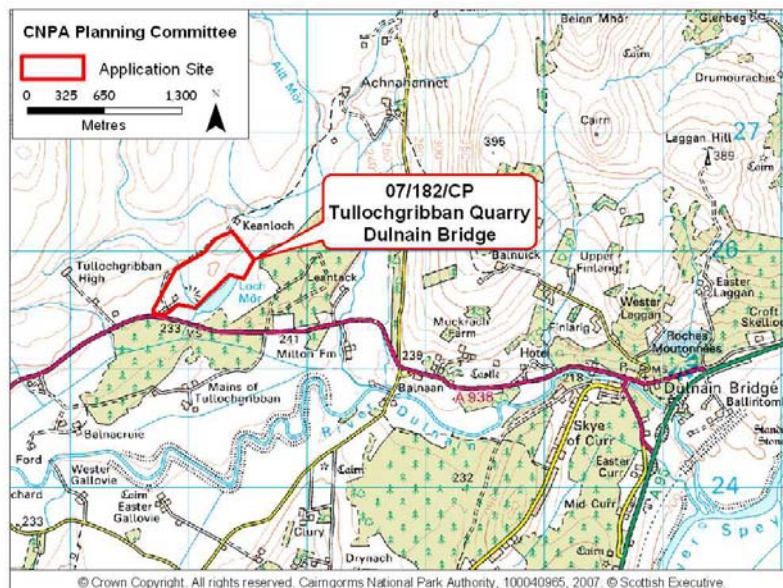
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**DEVELOPMENT PROPOSED:** REVIEW OF CONDITIONS ON EXISTING PLANNING PERMISSION FOR MINERAL WORKINGS (SECTION 74 OF THE TOWN AND COUNTRY (SCOTLAND) PLANNING ACT 1997)

**CNPA REFERENCE:** 07/182/CP

**APPLICANT:** ENNSTONE THISTLE LTD., C/O JOHNSON POOLE AND BLOOMER, LAND CONSULTANTS, 50 SPIERS WHARF, GLASGOW

**DATE OF CONSULTATION:** 18 MAY 2007



**Fig. 1 - Location Plan**

## SITE DESCRIPTION AND PROPOSAL

### Location and background context

1. This application has been submitted to Highland Council by Johnson Poole and Bloomer, Land Consultants, on behalf of Ennstone Thistle, the owners of Tullochgribbin Quarry. The application has been made under Section 74 of the Town and Country Planning (Scotland) Act 1997 and is for the determination of a new schedule of conditions to facilitate the development of sand and gravel reserves in an area in which the applicants contend is covered by an extant planning permission granted under Highland Council<sup>1</sup> reference no. 1964/798 in February 1965. In recognising the fact that the subject site lies within the Cairngorms National Park, the Highland Council have consulted the CNPA. This report is therefore a non statutory consultation response, in which I propose to comment generally on the principle of the development, and to comment in detail on the schedule of conditions proposed by the applicants to be applied to future mineral workings on the land.
2. The total area of land covered by this current application is approximately 25 hectares of land. The site is located in a rural area between the settlements of Carrbridge and Dulnain Bridge (6 kilometres to the west and 4 kilometres to the east respectively). The land is located a short distance off the A938 (Carrbridge - Dulnain Bridge road) and access is gained off an existing track which leads approximately 280 metres from the public road. The site is bounded to the north, south and west by agricultural land and Loch Mor forms the boundary to the east, with the Tullochgribbin coniferous plantation further eastwards of that.



**Fig. 2 : Partial view of the site, close to the junction of the access track and the public road.**

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<sup>1</sup> The decision on the application in 1965 was made by the County Council of Inverness, which has since become part of the structure of the Highland Council.

3. Of the 25 hectare site, quarrying activity has previously been undertaken over approximately 4 hectares and that land now lies in an unrestored state, although there is some evidence of vegetation slowly colonising there. Quarry activity has not occurred at the site at least since the early 1980's. In 1997 Highland Council classified Tullochgribbin Quarry<sup>2</sup> as a 'dormant site'<sup>3</sup> following a statutory review of mineral permissions under the Environment Act 1995.<sup>4</sup>

### **Quarrying proposal**

4. Subject to Highland Council determining to attach a new schedule of conditions to facilitate renewed mineral workings in the identified site area, it is indicated in documentation accompanying this application<sup>5</sup> that future quarrying would comprise approximately 11 hectares out of the total 25 hectare site area. The 11 hectares includes the already disturbed quarry area (of approximately 4 hectares). The landform in the existing disturbed quarry area has an elevation range of between 233 metres and 241 metres AOD. The remaining 7 hectares over which quarrying would also occur currently consists of hummocky grazing land, with elevations ranging between 240 metres and 250 metres AOD.
5. The extraction is proposed to proceed in 7 phases over the 11 hectares. Phase 1 is detailed as having a duration of 4 years, whilst phases 2 to 6 are each anticipated to take approximately 5 years to work. Phase 1 would comprise of reworking in the already disturbed area, with each subsequent phase progressing in a south westerly to north easterly direction. The exception to this general method of phasing is the northern most area of the phase 1 working, where the regarded quarry face and an undisturbed area of sand and gravel behind it would be "retained as a visual screen to restrict views of the future extraction in Phases 2 to 6, from the main road."
6. Supporting documentation indicates that Phase 1 working in the disturbed area would commence with the regrading of the old quarry face to a stable angle, "after which it would be soiled and grass seeded."

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<sup>2</sup> A map of the extent of land on which permission was granted in 1965 for the working of minerals cannot be located by Highland Council. The only maps relating to the area are those prepared in 1997 as part of the statutory review of mineral permissions under the Environment Act 1995. The map, although of poor quality, appears to identify the 25 hectares that is the subject of this application, as a 'dormant site.'

<sup>3</sup> A dormant site refers to a site where no mineral development has been carried out to any substantial extent in, on or under the site at any time in the period beginning on 22 February 1982 and ending with 6 June 1995.

<sup>4</sup> The legislation was incorporated into planning law under Section 74 of the Town and Country Planning (Scotland) Act 1997.

<sup>5</sup> An Environmental Impact Assessment and associated non technical summary have been submitted as part of this application.

7. Supporting information indicates that the quarry would despatch up to 40,000 tonnes of sands, gravels and concreting aggregate per annum, “solely for the local market.” The information does not however provide details on what is considered to constitute “the local market.”

#### **Extraction, processing and dispatch**

8. Extraction and processing is proposed to take place intermittently during the year, dictated by demand. Mobile units would be used on site for the various parts of the extraction and processing procedures. A wheeled loading shovel would extract sand and gravel from the working face, and a mobile plant would subsequently wash and screen the extracted material into the various products. Where the need arises a mobile crushing plant would be introduced into the site once or twice annually in order to crush oversized material within the deposit.
9. Vehicles would be loaded with quarry products using a wheeled loading shovel. Based on an average payload of 17 tonnes, supporting information indicates that an average of 8.7 vehicle movements would leave the site per day in total. It is also estimated that equal amounts of quarry traffic would utilise the A938 in both directions, with 50% travelling in the direction of Carrbridge and the remaining 50% in the direction of Dulnain Bridge.

#### **Environmental Impacts**

10. An Environmental Statement has been submitted in support of this application for a review of conditions. In order to provide a fuller understanding of the works to be undertaken at the site and the predicted impacts, a brief summary will be provided in the following sections on issues such as landscape and visual impact, noise, air quality etc..

#### Landscape and Visual Impact

11. The Environmental Statement contends that the visual impacts of the development would be limited through a combination of existing tree cover, the existing landform and additional screen planting. The overall visual impact of the development is described only as being ‘slight negative.’ Similarly the impact upon landscape character is also described as being ‘slight negative’ in the operational phase. It is considered to be ‘slight beneficial’ upon final restoration of the application site and a case is advanced that the development would provide the “opportunity to introduce an overall enhancement of the setting as restoration of the quarry will include a range of native species planting and the introduction of pond areas within the site.”

#### Air Quality

12. It is conceded in the Environmental Statement that dust emissions from quarries have the potential to be caused by some of the activities which occur on a site, such as the stripping of soils and overburden, extraction and processing. Reference is made to “The Environmental

Effects of Dust from Mineral Workings”<sup>6</sup> which provides advice on the sensitivity of receptors to dust. Receptors within 100 metres of a minerals development are considered to be at highest risk in terms of dust sensitivity, whilst those sited between 200 – 250 metres are at low risk. The Environmental Statement details a number of residential properties that are located in excess of 800 metres from the subject site (two properties at Tullochgribbin High, 900 metres to the west; Tullochgribbin Holiday Cottages 800 metres to the west; and Mains of Tullochgribbin located 800 metres to the south of the site). In addition, an uninhabited property, Keanloch, is also identified 140 metres to the north east of the site.

13. In assessing the potential for dust impacts, it is concluded that the site is subject to high rainfall (with the case being made that rain decreases dust emissions as a result of both surface wetting and the increased rate at which dust is removed from the air) and the closest residential property is located approximately 140 metres from the closest proposed point of quarrying activity in the opposite direction to the prevailing wind. Having regard to such factors, as well as the existence of the Tullochgribbin Plantation to the south and east providing a vegetative screen, it is concluded that there is limited potential for dust impacts. Mitigation measures are proposed to minimise any dust impact, including the seeding of soil and overburden storage mounds as soon as possible after their formation; the planting of a birch screen to the south and west of the site; the exposed quarry area to be kept to a minimum by progressive restoration; the positioning of processing plant in a quarry void in order to minimise the extent of wind dust blown; and use of water to dampen down stock piles.

#### Hydrogeological and Hydrological

14. In detailing baseline hydrogeological conditions the Environmental Statement states that groundwater flow is anticipated to be in a southerly direction towards Loch Mor and it is also considered that the water table at the site will be at an elevation of approximately 231 metres AOD. With the exception of proposed settlement lagoons and the excavation of shallow ponds on restoration (which would be at levels of 228 metres AOD), phases of working would be above the groundwater table and consequently working would be dry. The majority of site activities would not therefore give rise to hydrogeological impacts.
15. Mitigation measures are proposed to deal with any limited activities which may have potential to cause hydrogeological impacts. The protection of local shallow groundwater is proposed to be undertaken in accordance with “Mineral Extraction – Code of practise for the owners and operators of quarries and other mineral extraction sites – Groundwater Regulations 1998.”<sup>7</sup> Measures include any water used by

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<sup>6</sup> HMSO 1995.

<sup>7</sup> This document sets out guidance on the prevention and minimisation of substances entering the groundwater, through good code of conduct.

the processing plant being drawn from the settlement lagoons and any unclean water pumped back to the same lagoons to minimise the volume of fine silty material in the extraction area; drainage from haulage roads to be directed into swales for the conveyance, infiltration, detention and treatment of any surface run off generated, with surface run off contained within the void; and all refuelling and servicing of mobile plant to take place at a specially constructed bunded storage tank and hardstanding area.

16. In terms of an assessment of baseline hydrological conditions the Environmental Statement details the fact that the site is bounded to the south by Loch Mor and to the west by a minor burn with drainage from the burn and the loch entering the River Dulnain. Surface water run off rates are estimated to be low, given the presence of a thin granular topsoil and significant thickness of unsaturated granular sand and gravel soils. There will be no discharge to the local burn or loch. In addition, given the hydrology of the site and the surrounding area, it is not considered that there is a significant flood risk to the site.

#### Noise

17. A Noise Assessment was carried out by specialist consultants (Vibroch Limited). Reference is made to PAN 50, "Annex A – The control of noise at surface mineral workings"<sup>8</sup> being the latest government guidance applicable to the control of noise from surface mineral workings in Scotland, and the recommendations emanating from this guidance. The document recommends that "the daytime nominal limit at noise sensitive properties used as dwellings should normally be 55dB L<sub>Aeq1h</sub>" but also states that "a lower nominal daytime limit might be more appropriate in quieter rural areas if a limit set at 55dB L<sub>Aeq1h</sub> would exceed existing background noise levels by more than 10dB(A)."
18. The most sensitive noise receptors identified are the same as the residential properties identified in relation to air quality. Vibroch Consultants have prepared noise prediction assumptions, which have been calculated on the basis of combinations of plant working at the closest point to the prediction location. As such the predictions are based on worst case scenarios which may be of relatively short duration. It is predicted that the worst case scenario would only occur intermittently over the entire life of the site and accordingly longer term noise levels outside the site boundary would normally be significantly less. The worst case noise scenario at each of the properties<sup>9</sup> was examined. The study concluded "with the exercise of reasonable engineering control over general operations, all working within Tullochgribbin Quarry should be carried out within the noise criteria considered by PAN 50 to be normally justified for surface mineral operations."

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<sup>8</sup> Published in October 1996.

<sup>9</sup> Mains of Tullochgribbin, Tullochgribbin Holiday Cottages, Tullochgribbin High and Keanloch.

### Ecology

19. The section of the Environmental Statement dealing with Ecology has been informed by the consultants engagement in discussions with Scottish Natural Heritage dating back to 2004. The Habitat Survey was undertaken in April 2004.
20. It is stated that the proposal would result in the removal of improved grassland and quarry habitat and neither habitat is described as being ecologically significant. The habitat loss associated with the proposal is considered to be temporary. In the long term, the reinstatement of the site would primarily be in the form of grassland establishment consistent with surrounding improved grassland habitat and the return of the area to grazing. The reinstatement proposals would also introduce a valuable standing water habitat in the form of two new ponds. The Environment Statement concludes in the section on ecology that “the overall effect will be to the benefit of the ecology of the area.”

### Cultural Heritage

21. Historic Scotland has advised that the proposed site does not affect any sites under its remit. Highland Council has also confirmed that there are no known archaeological sites contained within the site boundaries and that the archaeological potential of the site is moderate to low. It is suggested in the Environmental Statement that, although the chances of a find are low, an archaeological watching brief is carried out on future soil stripping operations, in order to ensure that any potential archaeological finds are appropriately dealt with and recorded.

### **Recent planning application history on the subject site**

22. Ennstone Thistle Ltd. sought full planning permission in 2005 for the reopening and extension of Tullochgribbin Quarry. The application was called in by the CNPA on 8<sup>th</sup> April 2005 (CNPA planning reference no. 05/157/CP refers). Further to an assessment of the proposal and the receipt of various consultation responses, additional detailed information was sought regarding the background to the proposal, the applicants case / need for the proposed extraction works at this location, as well as other aspects of technical information. The information was received in December 2005.
23. The overall site area which was the subject of the application was 6.5 hectares. 4 hectares of the site area included the previously worked quarry. In addition to further workings in the disturbed area, permission was also sought for new extraction works on the remaining 2.5 hectares of the site. A three phase plan, with an overall lifespan of 12.5 years was proposed and it was estimated that the total extraction would be in the region of 500,000 tonnes (equating to an extraction rate of 40,000 tonnes per annum). The proposal involved excavations to a level of 232 metres AOD, with some areas of localised deepening to a level of circa. 228 metres AOD. The proposal included site restoration

details, generally involving progressive restoration of the site at the end of each of the proposed phases. The overall intention of the restoration programme was to restore the full extent of the application site to a mixture of agricultural grazing and nature conservation after use.

24. The application was recommended for refusal and was scheduled to be determined at the meeting of 5<sup>th</sup> May 2006. Further to a request from the applicants for a deferral the application was not considered at that meeting. Refusal of planning permission was recommended for a number of reasons including the proposal being contrary to the CNPA's policy on mineral workings as expressed in Interim Planning Policy No. 4 : Mineral Workings and that sand and gravel aggregates to serve the needs of the National Park could be readily sourced at existing operating sites within and outside the Park area and that there was no case of overriding national need for the extraction of the minerals; that the proposed development would result in unacceptable physical and visual alterations to the landscape character of this rural area and would also have the potential to have a negative impact on the tourism and recreation interests of the area, as well as being inconsistent with national planning policy, as detailed in **NPPG 4 - Land for Mineral Workings**; and that the proposed development would involve significant alterations to the existing landform within the subject site, creating an obtrusive and visually prominent scar in the landscape, and where the physical changes are likely to be of a scale that would negatively impact on the enjoyment of the special qualities of the area by the general public.<sup>10</sup>

### Proposed conditions

25. In making this current application under Section 74 of the Town and Country Planning (Scotland) Act 1997, the applicants are entitled to suggest a schedule of conditions which they wish to have considered. Appendix 1 of the Environmental Statement includes eleven proposed conditions, as outlined below.

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<sup>10</sup> Reason no. 1 : The proposed reopening of a quarry area in which the use has been discontinued for a significant period of time, together with the proposed new quarry extension is considered to be contrary to the Cairngorms National Park Authority's policy on mineral workings as expressed in Interim Planning Policy No. 4 : Mineral Workings. Sand and gravel aggregates to serve the needs of the National Park can be readily sourced at existing operating sites within and outside the Park area and there is no case of overriding national need for the extraction of the minerals. The proposed development is therefore unnecessary within the National Park and would set a precedent for further developments of this nature within the area. Reason no. 2 : The proposed development would result in unacceptable physical and visual alterations to the landscape character of this rural area of the Cairngorms National Park. It also has the potential to have a negative impact on the tourism and recreation interests of the area. The cumulative effects of the development proposal render it inconsistent with national planning policy, as detailed in **NPPG 4 – Land for Mineral Workings** which advocates a policy of permitting mineral extraction within national designations only where the underlying objectives and overall integrity of the designated area will remain largely unaffected. Reason no. 3 : The proposed development would involve significant alterations to the existing landscape form within the subject site, creating an obtrusive and visually prominent scar on the landscape. The physical changes to the landscape, which is in its own right an important component of the natural heritage of the area, are likely to be of a scale that would negatively impact on the enjoyment of the special qualities of the area by the general public and the development would therefore fail in particular to promote the first and third aims of the Cairngorms National Park.



*Condition no. 1 : Time limits*

This permission shall endure for a period of 32 years from the date of the consent by which time all quarry workings shall have ceased and the site shall have been restored in accordance with the restoration / reinstatement plans.

*Condition no. 2 : Access*

Prior to the re-commencement of site operations the operator shall amend the access in accordance with the design agreed with the Highland Council Technical Services Department.

*Condition no. 3 : Public Road Conditions*

The site operator shall ensure that vehicles departing the site are free of mud and other deleterious material and that no such materials are carried onto the public highways. In the event of accidental spillage or tracking of such material onto the quarry access road the site operator shall make all necessary arrangements to clean the affected area at the earliest possibility.

*Condition no. 4 : Site Traffic*

No loaded lorries shall depart the site unsheeted.

*Condition no. 5: Hours of Operation*

That unless otherwise agreed in writing with the Highland Council, extraction and processing operations at the quarry shall be restricted to the hours of 0700hrs to 1730hrs (Monday to Friday) and 0700hrs to 1300hrs (Saturday). There shall be no extraction or processing operations on Sundays.

*Condition no. 6 : Noise Limit*

That unless otherwise agreed in writing with the Highland Council, noise measured at noise sensitive property, shall be limited to the noise levels stated in the Johnson Poole and Bloomer Land Consultants "Environmental Statement in Support of a Section 74 Application" dated April 2007. For the avoidance of doubt, during normal weekday working hours, the free field Equivalent Continuous Noise Level for the period due to the temporary operations of soil and overburden handling and drilling, shall not exceed 55dB free field, and at all other times, for other operations, the free field Equivalent Continuous Noise Level, for the period shall not exceed 50dB.

*Condition no. 7 : Air Quality*

That unless otherwise agreed in writing with the Highland Council, the mitigation measures for minimising the deposition of dust from the quarry outside the application site boundary, as stated in Paragraph 4.6 (Air Quality - Mitigation) of the Johnson Poole and Bloomer Land Consultants "Environmental Statement in Support of a Section 74 Application" dated April 2007, shall be implemented at all times in the future.

*Condition no. 8 : Oil and Fuel Management*

Any oil, fuel, lubricant and other potential pollutants shall be handled on the site in such a manner as to prevent spillage and pollution of any watercourse. This shall require the storage of oil and fuel in suitable tanks and containers, which shall be housed in a double skinned tank or suitable bund able to contain 110% of the total contents of the tank / container.

*Condition no. 9 : Soil Stripping and Storage*

Soil stripped from the site will be stored in soil bunds and not taken off site, then used in the restoration of the site.

*Condition no. 10 : Restoration*

Restoration will accord with the proposals as stated in Paragraph 1.4 and 1.11 of the Johnson Poole and Bloomer Land Consultants "Environmental Statement in Support of a Section 74 Application" dated April 2007.

*Condition no. 11 : Landscaping*

Before any work commences a detailed landscaping scheme shall be submitted to and approved in writing by the Highland Council.

## DEVELOPMENT PLAN CONTEXT

### National Policy

26. **SPP 4 – Planning for Minerals** states that the Executive supports a positive approach to minerals planning. It is recognised however that mineral working may have an impact on local communities and the environment and consequently it is advised that the planning system must "ensure that all mineral proposals are fully assessed so that extraction only takes place where those impacts can be made acceptable."
27. **SPP4** includes a specific section entitled 'Locational Considerations' and conservation of the natural and built heritage is referred to in detail. It is stated that the Executive is committed to safeguarding and enhancing Scotland's natural and built heritage, including areas designed for their international and national heritage value. Ultimately it advises that "planning permission should only be granted where there will not be a significant adverse effect on the natural or built heritage features and qualities of the area under consideration."
28. In a section entitled 'Addressing Operational Issues', several topics are discussed, including transport, noise, dust and air quality, groundwater and surface water, mineral waste and restoration, aftercare and after-use. In terms of noise, it is advised that consideration should be given to the adverse effects from noise on site arising from various quarrying activities. Depending on the sensitivity of receptors it is considered "preferable to have a ridge, baffle mound or other solid structure." On the subject of dust **SPP4** requires that operators provide sufficient information to enable a full assessment to be made of the likely effects

of development, together with proposals for appropriate control, mitigation and monitoring. Where the effects cannot be adequately controlled or mitigated it is advised that planning permission should be refused.

29. On the subject of 'restoration, aftercare and after-use' **SPP4** advocates including in planning applications detailed proposals for phased working, progressive restoration where applicable and provisions for aftercare and after-use. Proposals are also required to address visual impacts during the life of the site, as well as taking into account the locational impact of operations, design, layout and phasing. The use of financial guarantees are advocated as an appropriate means of reassuring communities of operators' commitment and ability to meet their operational, restoration and aftercare obligations.

### **Circular 34/1996**

30. In commenting on conditions it is necessary to bear in mind guidance contained in the Scottish Executive's **Circular 34/1996**. In considering the types of conditions that would be appropriate in any particular case, it is advised that regard should be had to all material planning considerations including the type of material; the nature and extent of existing workings; the location and planning history of the site; land quality and proposed after-use; and the availability of suitable restoration materials. Full modern conditions are considered appropriate for dormant sites.
31. The Circular advises that 'working programmes' should be produced for all sites to ensure that operations are designed in such a way as to protect areas of environmental and ecological importance and the amenity of nearby residential and other sensitive property. "Conditions, other than those submitted by the applicant, which would further limit extraction areas or further restrict depths of working should generally only be imposed where the effect of the new restriction would not prejudice to an unreasonable degree the economic viability of the operation or the asset value of the site."
32. The Circular advocates the use of working hours conditions and also conditions limiting the impact of noise on sensitive properties. Where a site is not already subject to satisfactory conditions providing for restoration and aftercare, appropriate conditions dealing with this issue should be included. Restoration and aftercare conditions should be reasonable having regard to the circumstances of a particular case. **Circular 34/1996** advises that the "type of restoration that will be appropriate in any particular case will depend, amongst other things, on the nature and extent of existing workings and the availability of suitable restoration materials."<sup>11</sup>

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<sup>11</sup> Further advice on restoration is provided in *Planning Advice Note PAN 64 – Reclamation of Surface Mineral Workings*.

33. Paragraph 119 of the Circular sounds a note of caution in relation to consents required from other statutory agencies. It is advised that planning conditions should not seek to control matters that are the proper concern of other statutory agencies, “except where planning interests are clear and the conditions in the non-planning consents, authorisations and licenses are not sufficient to protect those interests.”
34. Annex L of **Circular 34/1996** is an Illustrative Guide to Conditions, which is intended to be used by both applicants and planning authorities in the preparation and consideration of new schemes of conditions. It provides guidance on the nature of conditions to be applied in respect of time limits, access arrangements, working programme, environmental protection, landscaping and restoration, aftercare and after-use.

### **Highland Structure Plan**

35. Section 2.11 of the **Highland Structure Plan** on Minerals and Peat states that a key issue is integrating the commercial and socio-economic potential of mineral workings with the high environmental quality of the area. Mineral activity is identified as being an important rural activity and the Plan cites the example of providing aggregate and dimension stones for construction projects. In addition to outlining the benefits and indeed the need for mineral activity, the potential negative effects are also detailed including environmental disruption with effects on landscape scenery, biodiversity and water quality, and also adverse impacts on the quality of life of residents in close proximity, as well as potential “negative economic impacts through damaging tourism and recreational resources.”
36. Section 2.11.6 of the Plan concedes that there is likely to be a continued requirement for small scale aggregate workings “because of the reduction in transport movements that the winning of a localised source provides.” However, it also warns that this has to be balanced against the disbenefit of opening up a new working, albeit temporarily, and the potential loss of custom to established quarries some distance away.”
37. The need to re-establish worked out sites to a future beneficial use is also promoted in section 2.11.8 of the Structure Plan. It is suggested that this can be achieved in a variety of forms, ranging from agriculture and woodlands to recreational facilities and habitats for nature conservation.
38. **Policy M2** of the **Highland Structure Plan** summaries the general policy on mineral extraction, stating that “applications for mineral extraction will be supported provided that they conform to General Strategic Policies and that there are no significant adverse environmental or socio-economic impacts.” It is also stated that approvals for mineral extraction should be for a temporary period only, “with conditions tied to a method statement and plan covering working

procedure, phasing, environmental protection, restoration, after-use and after-care.” Where necessary, the seeking of a financial guarantee in respect of restoration and after-care is also advocated.

39. The **Highland Structure Plan** in its section on Nature Conservation advises that nature conservation interests are not confined to designated sites and that all development proposals should be evaluated for their implications on nature conservation, both direct and indirect. The Plan does however highlight the fact that *“the existence of designations does not necessarily preclude development from taking place within or affecting the sites”* provided they are compatible with maintaining the features for which the sites are designated. The general thrust of **Policy N1 on Nature Conservation** is that new developments should seek to minimise the impact on the nature conservation resource and enhance it wherever possible.
40. **Policy L4 on Landscape Character** refers to the need to have regard to the desirability of maintaining and enhancing present landscape character in the consideration of development proposals. **Policy G2 on Design for Sustainability** states that proposed developments will be assessed on the extent to which they, amongst other things, make use of brownfield sites, existing buildings and recycled materials; are affected by safeguard zones where there is a significant risk of disturbance and hazard from industrial installations, including noise, dust, smells etc; impact on individual and community residential amenity; impact on resources such as habitats, species, landscape, scenery, cultural heritage, air quality and freshwater systems; and contribute to the economic and social development of the community.

#### **Badenoch and Strathspey Local Plan (1997)**

41. Section 2.2.3 of the **Badenoch and Strathspey Local Plan** refers specifically to minerals, stating that “the Council will apply their Development Control Policy No. 5 governing the Control of Mineral Workings throughout the Local Plan area.” Whilst acknowledging that scope exists for mineral extraction, the Local Plan advises that the “suitability of specific sites will be subject to assessment of environmental impact, servicing and safety aspects, together with prospects for site rehabilitation.” Section 2.2.3 of the Plan also advises that worked out or abandoned sites adjacent to the main road network could be suitable for after-use.
42. In its section on **Conservation Objectives**, the Local Plan refers to the exceptional quality of the natural environment of the area, and states that it is the Council’s policy to *“promote sustainable development of the area’s resources and ensure an acceptable balance between economic growth and safeguards for the outstanding heritage.”*

### **Cairngorms National Park Plan**

43. The strategic objectives set out in the Cairngorms National Park Plan provide a long term framework for managing the National Park and working towards a 25 year vision. The strategic objectives are dealt with under three broad headings – (i) conserving and enhancing the park; (ii) living and working in the Park; and (iii) enjoying and understanding the Park.
44. In terms of conserving and enhancing the special qualities of the National Park, the strategic objectives set out an approach to managing the natural and cultural heritage of the Park in a way that recognises the inter-dependence between the special qualities, management of the natural and cultural heritage and important links to the socio-economic viability of land management, businesses and communities. Some of the strategic objectives relating to landscape and the built and historic environment include maintaining and enhancing the distinctive landscapes across the Park; ensuring development complements and enhances the landscape character of the area, and raising awareness and understanding of the influences on natural processes, land management and culture on the landscape character.
45. There are several strategic objectives relating to biodiversity. Some of the most pertinent to a proposal of this nature include conserving and enhancing the condition and diversity of habitats and species present throughout the Park through a landscape-scale approach to habitat networks, as well as promoting appropriate reintroduction of species and reinstatement of habitats and identifying the likely ecological, economic and management impacts.
46. A further section of the Plan, also under the heading of conserving and enhancing the natural heritage of the area, addresses the subject of geodiversity, noting that the geological and geomorphological features of the National Park form an outstanding record of natural processes. Strategic objects for geodiversity include safeguarding the geological and geomorphological features and processes that contribute to the landscape of the Park and safeguarding against large-scale extraction and removal of mineral resource from the National Park. In terms of this latter strategic objective the Cairngorms National Park Plan elaborates, stating that “while small scale mineral extraction for local use can be undertaken in appropriate places, large-scale commercial extraction for use beyond the National Park is not appropriate. In particular, features of geological and geomorphological importance should be safeguarded from extraction.”
47. Under the second broad heading – Living and Working in the Park, the Plan advises that sustainable development means that the resources and special qualities of the National Park are used and enjoyed by current generations in such a way that future generations can continue to use and enjoy them. Section 5.2.3 addresses the topic of economy and employment, where it is noted that the sustainable growth of the

economy is key to maintaining sustainable communities and to creating a strong and vibrant National Park, which also stimulates and supports the wider regional economy.

48. The third broad theme in the National Park Plan is 'enjoying and understanding the Park'. The Cairngorms National Park is known for its outstanding environment and outdoor recreation opportunities. The Plan states that the experience of residents and visitors enjoying the National Park should be of the highest quality. It is advised that the Park should be managed to promote the enjoyment of the area in ways that are consistent with the special qualities, and also develop an understanding about the Park and contribute to its conservation and enhancement.

## CONSULTATIONS

49. Given that the CNPA's only role in this application is in preparing a consultation response to the Highland Council on the proposal, the extent of consultation has been confined to the CNPA's Natural Heritage Group. The proposal, albeit for significantly larger scale quarrying activity at the site, is essentially similar to the nature of the development for which full planning permission was sought in the aforementioned application (CNPA ref. no. 05/157/CP). As such a brief commentary on the consultation responses received in the course of that application may serve as a useful reminder of the issues raised and the views expressed.

### Consultation responses received in relation to 05/157/CP

50. **Scottish Natural Heritage** did not object to the proposal and noted that the site did not have any natural heritage designations. The response did however note that the site was adjacent to Loch Mor, which has an overflow that ultimately flows into the River Dulnain, which is part of the River Spey SAC. **SNH** considered it unlikely that any qualifying feature of the SAC would be affected significantly either directly or indirectly.
51. The response from **SNH** also referred to otters being known to feed at Loch Mor and also to use a stream to the east of the site. Although **SNH** did not consider that the workings of a quarry would present a fundamental problem to the otter population of the area, it was advised that a license to disturb otters may be required from the Scottish Executive. **Scottish Natural Heritage** also commented that Loch Mor is of considerable local natural heritage interest and it is of value to wildfowl during the winter months. **SNH** stated that there would be concern if the water quality of the loch were to be compromised or the fringing habitats damaged or disturbed.

52. **SEPA** raised various queries in the course of the application in relation to a proposed water crossing. **SEPA** also noted the results of a noise assessment submitted with the application, as well as commenting on restoration proposals. The response from **SEPA** ultimately recommended that a number of conditions be attached in the event of the granting of planning permission. Conditions included a requirement that a detailed site specific work method statement<sup>12</sup> to be submitted for the agreement of the Planning Authority, in consultation with **SEPA**, in order to prevent potential water pollution; a condition to address any noise issues; and a condition requiring the submission of a restoration scheme within a short timescale, and in line with guidance provided in PAN 64 Reclamation of Surface Mineral Workings.
- 53 The **Area Roads and Transport section** of Highland Council commented that a number of works would be required to be completed prior to the undertaking of any work connected with the proposal. Required works included upgrading of the vehicular access to the site, including the creation of a bell mouthed access, surfacing of the access road, and the provision of at least 3 no. passing places; the provision of visibility splays and their on-going maintenance at either side of the access; and also the carrying out of off-site improvements works on or alongside the A938 public road, the details of which were outlined at a meeting between the applicant and Area Roads and Community Works Manager of Highland Council in the course of pre-application discussions. Direct dialogue also took place between the applicants / their agent and the **Area Roads and Transport section** regarding the provision of adequate vehicular access to the site and in correspondence dating from November 2005 that section have advised that the road layout proposed as a result of discussions satisfied the requirements in relation to vehicular access to the site. (Reference has been made in the non technical summary of the Environmental Statement accompanying this current application for renewal of conditions localised edge strengthening and the removal of a dip in the road surface close to the site addressing the concerns of the Area Roads and Transport section).
54. The **Environment Health Officer** at Highland Council has no objection to the previously proposed development and recommended that conditions relating to noise and working hour restrictions be attached in the event of the granting of planning permission.<sup>13</sup>

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<sup>12</sup> SEPA required that the work method statement address issues such as surface water run off; timing of works; measures to ensure that any fuels or chemicals from the plant does not cause pollution; landscaping works; and waste.

<sup>13</sup> The recommended condition required that during normal weekday working hours the free field equivalent noise level for the period due to quarry operations should not exceed 45dB at any existing noise sensitive property.



**Consultation response on the current application**

55. The CNPA's **Natural Heritage Group** examined the current proposal from the perspectives of ecology and landscape. The ecological value of the actual site is described as being currently limited and it is considered that it would not therefore be unduly compromised by the development. The ecological value of adjacent habitats immediately to the east, south and south west is considerably greater. **NHG** consider that the water quality and fringing habitats of Loch Mor are important habitats which must not be negatively impacted upon by the proposed development. **NHG** concur with the Environmental Statement in stating that wetland habitats provided by the burn to the south and south west of the site boundary should also be safeguarded from damage. **NHG** suggest that a condition would be necessary to address such concerns, with the condition requiring that the areas of wetland habitat are fenced securely to prevent incursion of plant, spoil and other materials during quarrying operations.
56. The consultation response from the **Natural Heritage Group** includes a detailed section of sand martins, referring to the suitability of the quarry for sand martins in view of the availability of nesting sites and the proximity of the loch for feeding. Reference is made to a site visit carried out by **NHG** in February 2006 (in the course of the previous application on the site) during which 20 – 30 sand martin nest holes were noted near the top of one small sand wall. **NHG** highlight the protection afforded to sand martin nests by the Wildlife and Countryside Act (1981) and note that it is an offence to knowingly disturb them during the breeding season, which runs from April to August. **NHG** advise that quarry operations should not be permitted on faces where sand martins are actively excavating or occupying nest holes. It is not however an offence to disturb nesting holes when not in use outside the breeding season, and sand martins can readily excavate new holes at the beginning of the breeding season. **NHG** suggest that the natural heritage value of the quarry site could be enhanced by the quarry operators providing nesting opportunities for sand martins by exposing a new face in a quiet area of the quarry not earmarked for excavation during summer months.
57. Comments are also advanced on tree planting and it is suggested that birch and willow screen planting as proposed in the Environmental Statement would be appropriate. Such planting would help to mitigate against potentially negative visual impacts of the development and would also contribute to the nature conservation value of the site. However, in order to further enhance the area **NHG** suggest that the tree planting should also incorporate aspen (*populus tremula*), which is a tree species of high conservation value and native to Strathspey. It is also recommended that all birch, willow and aspen trees planted should be native to Strathspey and of local origin.

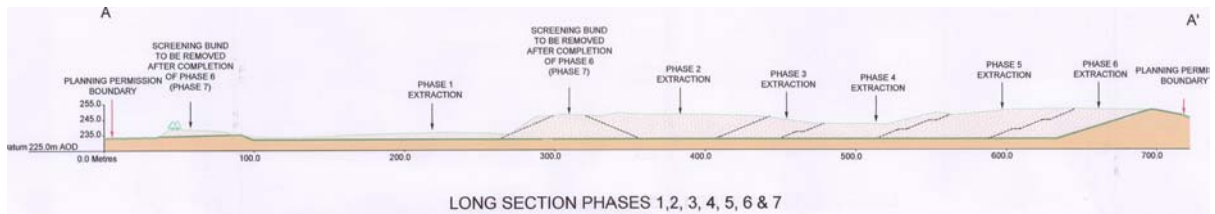
58. From a landscape perspective **NHG** comment that the extent of previous quarrying work at the site is quite limited and the recent re-vegetation of scrubby birch has mitigated the effects to a large extent. It is noted that the surrounding landform is formed from fluvio-glacial deposits and the undulations formed are a very distinctive feature of the area. The extent of quarrying works proposed at the site in this current application would remove this important characteristic and will result in the introduction of a large scale industrial development into this rural landscape.
59. In terms of the visual landscape, the existing site is noticeable from the main road as well as from the surrounding rural area. The proposals for quarrying activity over 11 hectares will be significantly more visible. It is noted that the existing plantation at present provides screening of the site from the north for road users. However, this is a commercial plantation and the benefits it provides are therefore unreliable, as it could be felled at any point, and indeed felling has taken place on a recent portion of the plantation.
60. The restoration proposals are described as 'curious' and **NHG** note that they appear to rely on a long length of planting for the majority of the works on site, which would then be removed. A final planting phase, unrelated to the first one, would be implemented around the proposed ponds in the centre of the site. **NHG** consider that the effectiveness of the interim planting is highly questionable. The long linear form is inappropriate to the area and would appear as an incongruous element in the landscape and it would be more likely to attract attention to the works rather than the opposite desired effect.
61. Concern is also expressed in relation to the final restoration proposal which would involve the formation of a pair of ponds in the middle of the site, lined with further linear planting, all of which would form a poor relationship with the nearby lochan. The report from **NHG** suggests that it would be more appropriate to consider making most of the site a wetland habitat of either open water or marsh, as this would provide more visual interest and greater capacity for biodiversity. Concern is also expressed at the suggestion in the Environmental Statement that the restored site would resemble a previous natural landform. It is considered highly unlikely that the proposed restoration at the site would achieve anything which could be mistaken for natural and **NHG** strongly advise that it is unacceptable to try to reproduce something which has already been taken away. The response concludes with the advice that a large wetland which would naturalise would be a much better alternative restoration option.

62. The restoration process would be expected to enhance the current nature conservation value. Elements of dumped materials currently on the site, as well as the remains of old structures should be removed. It is also suggested that the creation of new water bodies by further extraction would be beneficial ecologically, providing that it did not disrupt existing hydrological conditions, particularly Loch Mor. It is recommended that a more detailed restoration and after-use plan should be drawn up by the developer, ideally with input and advice from the CNPA, in order to maximise the ecological value of the ponds and the restored habitats, as well as minimising the visual impact on the area.

### **APPRAISAL**

63. Given the nature of this current application, which is purely for a review of conditions attached to an old mining permission, in accordance with the provisions of Section 74 of the Town and Country (Scotland) Planning Act 1997, the scope of the Cairngorms National Park Authority in formulating a consultation response on the matter to Highland Council is limited. Despite the availability of any site plan showing the permitted boundaries of the mineral working permission granted at Tullochgribbin in 1965, the currently identified site boundaries and the associated application under Section 74 of the Act were accepted. Documentation (please see Appendix 1) indicates that acceptance of the site boundary to which the 1965 permission is purported to relate was on the basis of the applicants supplying a copy of a signed plan attached to a Disposition which is held in the Register of Sasines.
64. In accepting and validating this current application for a review of the conditions attached to an old minerals permission, the existence of a permission for quarrying development pertaining to the entire site area has been accepted and the principle of development cannot therefore be open to debate. Foregoing sections of this report have however made reference to the application submitted in 2005 seeking full permission for quarrying activity on 6.5 hectares of the currently identified 25 hectare site. The report highlighted a number of concerns associated with a development of the nature proposed in the National Park and it is my view that the reasons for which a refusal of planning permission was recommended have not in any way been addressed or overcome in this current application, where the applicants suggest a schedule of conditions of a highly generalised nature to regulate extensive quarrying activities over 11.5 hectares of the site.
65. Concern was expressed in the previous application regarding the unacceptable physical and visual alterations to the landscape character of this rural area of the Cairngorms National Park that would result from the 6.5 hectare development which was proposed to take place over an 11 year period. It was considered to have the potential to have a negative impact on the tourism and recreation interests of the area.

Given that the current application would involve a significantly larger scale of works, and have a duration of approximately 32 years, the physical and visual alterations associated with this current proposal are of a far greater magnitude than the previous proposal and the negative impacts on tourism and recreation in the area would therefore be intensified.



**Fig. 3 : Overall site section demonstrating the alterations to the landform**

66. The development of an 11.5 hectare quarrying site would result in significant changes to the landform of the area of the National Park, as is evidenced by the site section shown in Fig. 3 above. Despite proposals for a method of progressive restoration after each phase of development, the extent of excavations would nonetheless result in the creation of an obtrusive and visually prominent scar on the landscape. It is also worth noting that some of the existing landscape features advocated in the Environmental Statement as providing screening and assisting in minimising the visual impact, are outside the site boundaries and on lands not in the control of the applications, and as such retention of such features in the landscape over the lifetime of the quarrying workings cannot be guaranteed. One of the most significant examples is Tullochgribbin Plantation which extends over a significant area to the south, east and north east of the subject site.
67. The cumulative effects of the development would render the works inconsistent with national planning policy, particularly **NPPG 4 – Land for Mineral Workings** which advocates a policy of permitting mineral extraction within national designations only where the underlying objectives and overall integrity of the designated area remain largely unaffected. Given the impact of the development on the landforms and landscape character which is an important component of the natural heritage of the area and its potential to diminish the general public's enjoyment of the area over a lengthy period of time, the development which is intended to be undertaken would fail in particular to promote the first and third aims of the Cairngorms National Park.
68. Notwithstanding the unsuitability of a development of the nature proposed in the National Park, for the purposes of this application it is necessary to comment on the schedule of conditions suggested by the applicants (please refer to paragraph 25 for details of the proposed conditions). The applicants suggested condition no. 1 refers to a 32 year period of quarry workings at the site. On going activity at the site over such a lengthy time period will have a significant impact on the landscape of this area of the National Park, as well as potentially having long standing negative impacts on the residential amenity of

properties in the vicinity, traffic and roads and affecting the general amenity and enjoyment of the area. In the interests of minimising the period of disruption in the area and achieving a full restoration of the site with maximum expediency, it would perhaps be more appropriate to restrict the time limit for working the quarry. However, in suggesting this it is necessary to acknowledge advice in **Circular 34/1996** that “new time limit conditions should only be imposed with the agreement of the applicant, otherwise the condition would constitute a restriction on working rights which could give rise to a liability for compensation.”

69. Suggested condition no. 2 deals with access to the site and advocates amendments to the access prior to the re-commencement of any site operations, in accordance with “the design agreed with the Highland Council Technical Services Department.” The exact details of the design have not been included in the documentation supporting this application, although reference is made to localised edge strengthening along a length of the A938 as well as the removal of a dip in the road surface close to the site. Given that the works required occur on land which is outside the site boundary and not believed to be in the ownership of the applicants, I consider it prudent to take a more stringent approach to ensuring that the required works are carried out. I would recommend that consideration is given to a Section 75 legal agreement to ensure the completion of the required works.
70. Condition no’s 3 and 4 of the suggested schedule address other traffic considerations, including the condition of vehicles departing from the site, requiring that they are free of mud and also requiring that no loaded lorries depart unsheeted. Whilst the general thrust of the conditions is acceptable, I have some concerns regarding the monitoring and enforceability of condition no. 3 in particular. The latter part of the suggested condition requires in the event of accidental spillage or tracking of material onto the quarry access road that “the site operator shall make all necessary arrangements to clean the affected area at the earliest possibility.” I would suggest that there is perhaps a need to define ‘necessary arrangements’ and also to stipulate a reasonable and practical time period within which cleaning would occur.
71. Conditions regarding hours of operation and noise limits are generally acceptable. The suggested hours of operation are similar to those which are generally acceptable in relation to commercial or industrial operations. The thresholds set in relation to noise generally accord with planning guidance on the subject.
72. Condition no. 7 relating to air quality refers to mitigation measures to minimise the deposition of dust being undertaken in accordance with proposals contained in the Environmental Statement. The mitigation measures proposed are of quite a general nature and not easily quantifiable from the point of view of monitoring. For example a statement that “soil and overburden mounds (if required) to be seeded

as soon as practicable following formation” includes several open ended points, such as whether the requirement for soil or overburden mounds would be determined by the applicants. The period of time in which such mounds would be provided is also undefined in the suggested condition.

73. Condition no. 8 of the suggested schedule deals with oil and fuel management. The requirement to provide suitable tanks and containers for the storage of oil and fuel is appropriate. However, in the interests of ensuring that any tanks or containers were located to ensure that their visual impact was minimised, an addition to the condition may be appropriate to determine the exact numbers and siting of any necessary tanks and containers. Similar amendments are required in respect of condition no. 9 which addresses the issue of soil stripping and storage. The suggested condition merely states that “soil stripped from the site will be stored in soil bunds and not taken off site, then used in the restoration of the site.” Given the potential visual and landscape impact that could result from soil bunds positioned around the site, it is imperative that the location of bunds in respect of each phase is agreed and that restrictions are imposed on the height and extent of the bunds.
74. Condition no’s 10 and 11 addresses the restoration and landscaping of the site respectively. Condition no. 10 simply refers to the restoration according with proposals stated in paragraphs 1.4 and 1.11 of the Environmental Statement. That section of the Environmental Statement is accompanied by site plans showing each phase of the proposed operations. The phasing details are however quite generalised, showing for example areas of ‘advanced screen planting’, ‘restored area’ and ‘spiny shrubs’ but lacking in the detail. It may perhaps be the intention that details of landscaping are dealt with under suggested condition no. 11 which states that “before any work commences a detailed landscaping scheme shall be submitted to and approved in writing by the Highland Council.” Given the importance of ensuring the appropriate restoration of the site, progressively following each distinct phase, and to ensure that the cumulative long term restoration programme is acceptable, there is a need for the inclusion of a far more detailed set of conditions in relation to restoration and landscaping aspects. In accordance with Annex L of Circular 34/1996 I recommend that conditions are included requiring the submission of detailed information for each phase of the works, to be agreed with the Planning Authority prior to the commencement of development. Information which should be sought by condition includes contoured site plans for each phase; details of the quantities of soil and soil making materials to be incorporated into each phase; details of timescales and methodology of seeding and planting and the origins of all tree species (native Strathspey origin is desirable); and a detailed landscaping condition of the nature normally applied by the CNPA, requiring detailed landscaping plans (species type, numbers, planting locations, height and girth at the time of planting etc.). Having regard

to the significance of a development of this nature in the Cairngorms National Park, it is strongly suggested that the CNPA should be given the opportunity to advise and comment upon all restoration proposals and it is strongly urged that the developers should be required to consider significantly amended final restoration proposals which would result in the creation of a large wetland area, as suggested in the consultation response from the CNPA's Natural Heritage Group.

75. In view of the scale of operations and the extensive time period over which works are proposed to be undertaken, together with the imperative need to ensure that the site is appropriately restored, consideration could perhaps be given to a requirement for a bond, to ensure the carrying out of all necessary restorative works.
76. In terms of the first aim of the Cairngorms National Park, to conserve and enhance the natural and cultural heritage of the area, it is imperative that conditions are also included to address concerns raised in relation to sand martins. As detailed in earlier sections of this report it is necessary to prohibit quarry operations on faces where sand martins are actively excavating or occupying nest holes and it would also be beneficial to require the creation of nesting opportunities for pine martins elsewhere on the site. This could be achieved by the quarry operators exposing a new face in a quiet area of the quarry during the summer months. Details of the intended areas of sand martin nest creation could be included in the further details required on the phasing and restoration proposals for the site.

## **IMPLICATIONS FOR THE AIMS OF THE NATIONAL PARK**

### **Conserve and Enhance the Natural and Cultural Heritage of the Area**

77. The development would have negative impacts on the landform characteristics of the area, would have a significant visual impact and would also adversely effect the ecology of the area. Given the nature of the development, its physical impact on the landscape of the area and its rural position all of which are part of the National Park's general natural and cultural identity, the proposal cannot be seen as conserving or enhancing the wider natural or cultural heritage of the area.

### **Promote Sustainable Use of Natural Resources**

78. A case has not been advanced in this application to justify mineral workings of the scale and duration proposed the development is not considered to promote the sustainable use of natural resources.

### **Promote Understanding and Enjoyment of the Area**

79. The development will have significant negative implications for this aim. The general industrial nature of the activity, its proposed duration of 32 years, the levels of heavy vehicles associated with the development, and the significant physical alterations to the landscape will all impact on the quality of general character and amenity of this rural location and could diminish the experience of visitors to this area of the National Park.

### **Promote Sustainable Economic and Social Development of the Area**

80. Economic benefits to the area have not been quantified and it could be argued that the positive benefits would be diminished by negative effects on the tourist and recreation appeal of the National Park.

### **RECOMMENDATION :**

81. That Members of the Planning Committee –
- (i) Endorse this consultation report and permit it to be forwarded to the Highland Council for consideration in their assessment of this Section 74 application;
  - (ii) Highlight the concern of the CNPA regarding the inappropriateness within the Cairngorms National Park of a development of the scale and nature which is proposed to occur; and
  - (iii) Request that the CNPA are facilitated with an opportunity to advise and / or comment upon any future amended phasing and restoration proposals.

**Mary Grier**  
**21st June 2007**

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