

Appendix 1

Written Submission for SEPA's objections to the Cairngorms National Park Plan 2nd Modifications (Objection Ref: 399)

Summary

Since SEPA's consultation response dated 18 December 2008 to the above there has been continued discussion between the Park Authority's Local Plan team and SEPA with the aim of SEPA being in a position to remove its objections unconditionally to the second modifications to the Cairngorm National Park Local Plan. As a result of these discussions SEPA confirms the status of its objections dated 18 December 2008 to the Modifications to the Cairngorms National Park Local Plan:

- Objection 399/Introduction 1.22 – Conditionally withdrawn subject to proposed changes being made (see page 2)
- Objection 399/Policy 13 (Flood Risk) – Conditionally withdrawn after receiving information from the Local Plan team on flood risk screening subject to proposed changes being made to individual house allocations (see page 7 onwards and Appendix 2, page 10).
- Objection 399/Policy 27 (Business Developments) – Conditionally withdrawn subject to proposed changes being made to Policy 32 (see page 4).
- Objection 399/Policy 32 (Waste Management) – Conditionally withdrawn subject to proposed changes being made (see page 4).
- Objection 399/Allocation of Sites – Conditionally withdrawn in part subject to proposed changes being made (see page 7 onwards). SEPA maintains an objection to the settlement proposal site allocations Ballater H1 and Grantown H1.

Please Note when reading the following text:

Blue text indicates wording in the Local Plan 2nd Modifications

Red text indicates revision in text SEPA recommends/requests.

Objection / Policy	Page no.	Paragraph no.
Introduction	3	1.22

SEPA **conditionally remove** this objection subject to reference being made in the list of supporting information to Drainage Impact Assessment (DIA) as per Karen Major's email dated 23.02.09

'1.22 Applications should be accompanied by any necessary supporting information. This could include traffic impact assessments, flood risk assessments, **drainage impact assessments**, business plans, environmental impact assessments, habitat surveys, or locational justification for the development.'

Objection / Policy	Page no.	Paragraph no.
Policy 13 – Water Resources	29	

SEPA **conditionally removes** its objection to Policy 13 part b) flooding subject to rewording of the settlement proposal allocations indicated below (see page 7 onwards).

Objection / Policy	Page no.	Paragraph no.
Policy 27 – Business Developments	50	

Objection

SEPA **conditionally removes its objection** to the wording of this Policy subject to rewording of Policy 32 as agreed by email with Karen Major 24.02.09 (see below)

Policy	Page no.	Paragraph no.
Policy 32 – Waste Management	56	

Objection

SEPA **conditionally removes its objection** to the wording of this Policy subject to rewording of Policy 32 as agreed by email with Karen Major 24.02.09.

Policy 32 Waste Management

Developments will be considered favourably where

- a) they are appropriately designed, and sited (demonstrating a sequential approach to site selection); **which considers the options of siting facilities on employment land; brownfield land; contaminated or despoiled land; or locations close to sources of waste arisings; and ,in the case of energy from waste, locations close to users of heat and power**
- b) assist businesses to manage their waste;
- c) assist local authorities to meet or surpass their Area Waste Plan targets or which include site waste management plans or create other waste management facilities. This will include municipal solid waste schemes, and local waste management schemes particularly where they involve the production of compost and/or energy from the waste, and also where there is a direct community benefit including local recycling centres;
- d) they demonstrate their consistency with the National Waste Strategy, National Waste Plan and Area Waste Plans.

There will be a presumption against the development of new landfill sites within the National Park unless the development

- a) includes appropriate measures for site restoration;
- b) has fully considered site selection to ensure reinstatement of derelict or despoiled land;
- c) includes the principles of self sufficiency in terms of capacity and location ; and
- d) provides on site facilities to allow on site recycling/waste treatment.

Proposals for the extension of **existing waste management facility** may be considered acceptable, subject to the consideration of a full Environmental Impact Assessment (EIA). Prior to the closure of an operational **waste management facility** (once it becomes full or redundant) details for its site restoration, after-care and after-use will be required for approval by the planning authority.

There will be a presumption in favour of the **existing safeguarding** of strategic waste management facilities and all sites required to fulfil the requirements of the Area Waste Plans., as shown on the proposals map attached as appendix XX`

Background and Justification

This policy supports the National Park Plan's strategic objectives for:

- Waste management

5.102 The careful use of our natural resources is important to all development proposals, and the reduction of waste goes hand in hand with this. Supporting the constituent local authorities in the delivery of their Area Waste Plans/Strategies, the Local Plan seeks to make adequate provision within the Park for the reduction in the amount of waste produced. This may include opportunities to exploit emerging technologies, for example combined heat and power proposals.

5.103 National guidance regarding waste management is given in Scottish Planning Policy 10 Planning for Waste Management, and Planning Advice Note 63 Waste Management and Planning. Through these the importance of promoting sustainability in all development is reinforced, and national aims of reduce, re-use and recycle, and see waste as a valuable resource are identified as key to all waste management developments. All new waste management developments also require to comply with the objectives of the Area Waste Plans, National Waste Strategy and National Waste Plan.

5.104 The National Park Plan identifies the reduction in waste produced as important, and recycling facilities within communities is supported, with all communities being able to access such facilities easily.

5.105 There are three Waste Strategy Areas that are each partially covered by the Cairngorms National Park: Highland; North-East (Moray and Aberdeenshire) and Tayside (Angus). They all have individual Area Waste Plan targets as well as lists of best practicable environmental options. The Local Plan policy is therefore designed to assist in the delivery of these targets and options.

Implementation and Monitoring

5.106 This policy will be applied where it is relevant to the implementation of the area waste strategies, and the National Park Authority will work closely with local authorities, and will devise a consistent approach to waste strategies and targets across the Park. The principle of development of waste transfer-management stations within recognised industrial areas will be supported in line with current best practice regarding such developments.

5.107 Reference should be made to Appendix X which details SEPA registered waste management sites to ensure development proposals safeguard such sites. The success of the policy will be measured against the reaching of targets within the National Park boundary.

Objection / Policy	Page no.	Paragraph no.
Policy 32 - Omission of Policy Safeguarding Waste Management Sites	56	

SEPA **conditionally removes its objection** to the wording of this Policy subject to rewording of Policy 32 as agreed by email with Karen Major 24.02.09 (see above)

Objection / Policy	Page no.	Paragraph no.
Policy 32 - Omission of Policy Providing Directional Guidance for New Developments	56	

SEPA **conditionally removes its objection** to the wording of this Policy subject to rewording of Policy 32 as agreed by email with Karen Major 24.02.09 (see above)

Objection / Policy	Page no.	Paragraph no.
Failure to Appraise or Demonstrate that all Allocations Have been Appraised for Flood Risk		

SEPA **partially removes its objection** to the failure to appraise or demonstrate that all allocations have been appraised for flood risk **conditionally** subject to rewording of the following settlement proposals as agreed by email with Karen Major on 20.02.09, 23.02.09 and 24.02.09:

However, **SEPA maintains its objection to the settlement proposal allocation Grantown H1. SEPA's written submission for this is contained in Appendix 2, page 10 of this response.**

Settlement Proposals

Aviemore

AV/H1: Situated to the north of Aviemore Highland Resort, this site has detailed planning permission for 161 dwellings. A flood risk assessment has shown the site to be marginally affected by flooding. Any future development proposals will be required to avoid the area identified at flood risk.

AV/H2: An outline planning application is with the National Park Authority for the development of this 1.7ha site. The consideration of reserved matters on this site, **or any further application for devolvement on this site** will need to work within the existing woodland clearings to minimise the loss of trees and retain the natural screening and setting of the site. Part of this site lies within SEPA's indicative 1 in 200 year flood risk area. A detailed flood risk assessment will therefore be required to accompany any development proposals for this site.

AV/H3: An outline planning application is with the National Park Authority for the development of this 5.5ha. The consideration of reserved matters on this site, **or any further application for devolvement on this site**, will have to take into consideration the SEPA indicative 1:200 year flood risk **masps** and a detailed flood risk assessment will be required.

Ballater

BL/H1: SEPA requests that the following text be removed:

~~v. Part of this site lies within SEPA's indicative 1 in 200 year flood risk area. A detailed flood risk assessment will therefore be required to accompany any development proposals for this site.~~

and replaced by:

A flood risk assessment has shown the site to be affected by flooding. Any future development proposals will be required to avoid the area identified at flood risk, i.e. no development is to take place below the 193.82m contour and minimum finished floor levels are to be 194.34m or above OD.

The plan states

ii. The site has capacity for around 250 units, with 90 dwellings envisaged during the life of the Plan.

SEPA requests that these figures are reassessed in light of the flood risk assessment to ensure that these are now correct before the final plan is adopted.

BL/ED1: The existing business units owned by Aberdeenshire Council will remain, with vacant space reserved for business uses. Part of this site lies within SEPA's indicative 1 in 200 year flood risk area. A detailed flood risk assessment may be required to accompany any further development proposals for this site.

BL/ED2: SEPA conditionally remove their objection subject to this site being removed from the settlement proposal.

BL/ED4 The existing caravan and camping site provides continued support to the provision of tourism accommodation within Ballater and will be protected from adverse development. Where appropriate, enhancement opportunities will be supported. The site lies wholly within SEPA's indicative 1 in 200 year flood risk area. A detailed flood risk assessment may be required to accompany any further development proposals for this site.

Grantown on Spey

See Appendix 2 for SEPA's written submission in relation to GS/H1

GS/ED1: The existing caravan and camping site provides continued support to the provision of tourism accommodation within Grantown on Spey and will be protected from adverse development. Where appropriate, enhancement opportunities will be supported. A flood risk assessment for the adjacent H1 site has shown this site to be partially affected by flooding. A detailed flood risk assessment may be required to accompany any further development proposals for this site.

Kingussie

KG/ED2: A small area of land to the west of Spey Street and adjacent to the railway line could also provide some opportunity to support the economic development of the settlement. Part of this site lies within SEPA's indicative 1 in 200 year flood risk area. A detailed flood risk assessment will therefore be required to accompany any development proposals for this site.

Newtonmore

NM/H1:

A 11.7ha site would provide land for around 120 dwellings. A detailed planning application is with the National Park Authority for the development of part of this. This application will now be considered in line with the current adopted local plan (Badenoch and Strathspey Local Plan 1997), but will assist in providing housing for this local plan and its housing needs. This visually prominent site will be the subject of a development brief, and any development within the site will ensure adequate access is provided to the rest.

ii. The development of this site presents an excellent opportunity to provide opportunities for large and small scale developers and builders to work together to bring forward the delivery of the proposal. This will be recognised in the development brief. The brief will also address any mitigation required as a result of the prominent nature of this site.

iii. Part of the site may be prone to flooding. The railway bridge and embankment downstream of the site have not been modelled as part of SEPA's indicative 1 in 200

flood risk area. A detailed flood risk assessment will therefore be required to accompany any additional development proposals for this site.

NM/ED3: the role of the Highland Folk Museum is important to the economic success of the area as a whole, and proposals to expand and enhance the facility will be supported. Part of this site lies within SEPA's indicative 1 in 200 year flood risk area. A detailed flood risk assessment will be required to accompany any development proposals for this site.

Braemar

BM/2: A detailed planning application is with the National Park Authority for the development of this site for 30 dwellings, and is linked to the provision of off site affordable dwellings at Kindrochit Court. The application will now be considered in line with the current adopted local plan (Aberdeenshire Local Plan 2006), but will assist in providing housing for this local plan and its housing needs.

A flood risk assessment for this site has shown it to be partially affected by flooding. As a result no development is to take place below the 325m contour and finished floor levels are to be 325.63m or above OD.

Carrbridge

C/ED2: The site provides an important contribution to the local economic position, and should be retained. Part of this site lies within SEPA's indicative 1 in 200 year flood risk area. A detailed flood risk assessment may be required to accompany any further development proposals for this site.

Cromdale

CD/H1: The site on the north eastern edge of the settlement between the Old Inn and Tom-an- uird View is appropriate for around 50 dwellings. Access to the site should utilise the existing local road network where possible, and should not have an adverse impact on the trunk road. A small watercourse runs through the site and potential flood risk has not been adequately quantified. A flood risk assessment may be required in support of any further planning application or reserved matters.

CD/ED1: a small site at the Smoke-House has some potential to provide for economic development in the village and any proposals must ensure that issues regarding contamination and access are adequately addressed. Part of this site lies within SEPA's indicative 1 in 200 year flood risk area. A detailed flood risk assessment will be required to accompany any further development proposals for this site.

Dalwhinnie

DW/ED2: The Loch Ericht Hotel provides an important tourist and community opportunity and appropriate proposals to enhance this will be supported.

Part of this site lies within SEPA's indicative 1 in 200 year flood risk area. A detailed flood risk assessment may be required to accompany any further development proposals for this site.

DW/ED3: The distillery provides an important economic and tourist provision within the settlement and proposals to enhance this facility will be supported. Part of this site lies within SEPA's indicative 1 in 200 year flood risk area. A detailed flood risk assessment may be required to accompany any further development proposals for this site.

Nethybridge

NB/H1: This 0.47Ha site opposite the football pitch has detailed planning consent for 13 amenity dwellings. Part of this site lies within SEPA's indicative 1 in 200 year flood risk area. A detailed flood risk assessment will be required to accompany any future development proposals for this site.

NB/H2: These two sites have outline consent for a total of 40 dwellings. Development on these sites will retain enough woodland to allow for movement of species between areas of woodland to the sides of the sites, and retain the woodland setting of this part of the village. A small watercourse runs through the site and potential flood risk has not been adequately quantified. A flood risk assessment may be required in support of any further planning application or reserved matters.

Appendix 2

Written Submission for SEPA's objections to the Cairngorms National Park Plan 2nd Modifications (Objection Ref: 399) – Housing Allocation GS/H1

GS/H1:

Summary

SEPA objects to the specific land use allocation in the Cairngorms National Park Local Plan on the grounds that:

- a) the specific land use allocation GS/H1 has been identified which is potentially at risk of flooding contrary to the provisions of national planning policy, guidance and advice, with particular regard to the Risk Framework set out in SPP 7 and the draft Scottish Planning Policy (SPP3) published in April 2009; and
- b) the allocation of a site at potential risk of flooding does not accord with the duties placed upon Local Authorities under Water Environment and Water Services (Scotland) Act 2003.

Background

Although this site is not shown to be at risk on SEPA's Indicative River and Coastal Flood Map (Scotland), a Flood Risk Assessment (FRA) was submitted to the Council in connection with planning application 06/320/CP. This has highlighted that a significant area of this site is susceptible to flood inundation but the Council to date have not modified this allocation accordingly. SEPA have an outstanding objection to this planning application in relation to flood risk and it has requested the provision of additional information to the satisfaction of SEPA. Once this additional information has been received and found to be to SEPA's satisfaction, SEPA is of the opinion that two separate parts of the site may be capable of being developed, possibly above the 219.5m contour. Until SEPA is satisfied with the revised FRA, an exact agreed reduced development boundary is difficult to determine, however to date it would appear that approximately 25 dwellings and an associated access road in the south-western section of the allocation lie within the flood plain as shown on drawing no. A050948/006 Rev0 dated 25.11.08 by WYG Group Ltd submitted in association with the planning application. This represents a significant proportion of the site allocation.

SEPA considers that the council have undertaken flood risk screening utilising flood risk information in accordance with the provisions of SPP 7 and PAN 69, however, this specific land use allocation, GS/H1 has been identified which is potentially at risk of flooding contrary to the provisions of national planning policy, guidance and advice, in particular to the Risk Framework set out in SPP 7. As a consequence property and people may be exposed inappropriately to flood risk.

Furthermore, through the allocation of site GS/H1, the Local Plan does not demonstrate that a sustainable approach of flood avoidance (rather than flood management) is being adopted.

Planning Policy and Planning Guidance Framework

The National Planning Framework stresses the importance of flood risk as a planning issue. It states (paragraph 55) that *"Rising sea levels and more intense rainfall will increase the risk of flooding. This brings new challenges in the way that we plan to protect our natural and built environments from climate extremes and it is essential that the implications of climate change are factored into the decision-making process"*.

It goes on to recognise that *“The projected increase in flood risk as a consequence of climate change also needs to be taken into account - both in relation to the siting of new development (as covered in Scottish Planning Policy 7: Planning and Flooding) and the protection of existing development.”*

Current planning policy relating to flooding is contained in a number of Scottish Planning Policies (SPPs):

SPP1: The Planning System (paragraph 16) states *“The planning system should take the possible impacts of climate change, for example greater rainfall and increased risk of flooding, into account when taking decisions on the location of new development and other changes in land use.”*

SPP3: Planning for Housing (paragraph 43) states *“Scottish Executive policy is to avoid unnecessarily increasing the number of areas that need artificial protection against flooding. Sites likely to be at significant risk from flooding including those on the functional flood plain should not be developed for new housing.”*

The most detailed national planning policy on flood risk is set out in SPP7: Planning and Flooding. The importance of giving due consideration to flood risk in planning matters is highlighted in paragraph 44 which states that:

“44. Flood risk is a material planning consideration for a wide range of sites including those with a history of flooding, in a flood plain, on low lying coastal land, adjacent to a watercourse, drained by a culvert, with drainage constraints or otherwise poorly drained. Very careful consideration must be given to those development proposals for which a flood would have especially serious adverse consequences.”

Furthermore the key role played in development planning is made clear in paragraph 2 which states (SEPA's emboldenment):

*“2. **Planning authorities must take the probability of flooding from all sources and the risks involved into account during the preparation of development plans** and in determining planning applications. Prospective developers also have key responsibilities, including: taking flood risk into account before committing themselves to a site or project; undertaking flood risk assessments and drainage assessments where required; and implementing agreed measures to deal with flood risk.”*

and in paragraph 38:

*“38. **The potential of land to flood should be considered during the preparation and review of every development plan in accordance with this SPP. 'Medium to high' risk areas for watercourse and coastal flooding, and areas where flooding from other causes is an issue must be identified early in the plan preparation process.** Taking that into account, planning authorities should still allocate sufficient land for development, and in particular meet the housing land requirement for each housing market area in full (see SPP 3). Proposals for the development of additional areas which would require new flood prevention measures must only come forward through the development plan process and with full consideration of all the implications. FLAGS should be involved at appropriate stages during plan preparation and review. The policy in*

this SPP will also be relevant in due course to the new development plans proposed under the Review of Strategic Planning.”

Furthermore paragraphs 42 and 43 of SPP7 states that (SEPA's emboldenment):

*“42. **The potential for sites to flood must be considered during the preparation and review of every local plan.** Few if any local plan areas will be completely free from the threat of flooding. Flood plains, other land alongside watercourses, land with drainage constraints or otherwise poorly drained, and low lying coastal land should be assumed to be at risk. **The consideration should take into account any areas identified in the Structure Plan, SEPA's indicative flood risk maps, records of previous floods, other sources and advice from consultees.** Flood risk assessments undertaken by developers or agents may also be available, though planning authorities may wish to validate them. FLAGs should be used to help identify and source the available information. These sources of information should usually be sufficient for local planning but a specific piece of work may occasionally be needed.*

43. Each Local Plan should:

- for watercourse and coastal flooding set out policies and **select development sites on the basis of the Risk Framework providing full justification if different probabilities are chosen;***
- consult adjacent authorities where different probabilities raise cross boundary issues;*
- indicate the circumstances where a freeboard allowance should apply;*
- identify sites or areas constrained by flood risk from other sources;*
- safeguard the flood storage capacity of functional flood plains;*
- set out policy for SuDS;*
- indicate the circumstances when a drainage assessment will be required on grounds of flood risk;*
- if appropriate describe where the promotion of managed coastal realignment or restoration of functionality to the flood plain could contribute to more sustainable flood management and natural heritage objectives; and*
- indicate the circumstances when water resistant materials and forms of construction will be appropriate.”*

SEPA notes that site GS/H1 is not a brownfield site. SEPA therefore notes that development on greenfield land such as is proposed here is not acceptable.

Furthermore, paragraph 48 of PAN 69 (SEPA's emboldenment) that:

*“48. SPP 7 also says that the potential for sites to flood must be considered in local plans. **At each review, the plan should guide development away from land at risk of flooding, based on areas identified in the structure plan and any other relevant sources of information.** Paragraph 43 of the SPP sets out in detail what the local plan should cover. A number of existing local plans contain clear policies which identify land with a high probability of flooding within the plan area and set out the implications for future development. For example, see the Strathearn Local Plan policy below.”*

SEPA considers that National Planning Policy and Advice makes clear that flood risk should be assessed in the preparation of Local Plans and those sites should be allocated on the basis of this assessment in accordance with the Risk Framework laid out in SPP7.

The draft SPP3, which will consolidate the current seventeen separate SPPs, published in April 2009 states in paragraph 152:

“152. Planning authorities must take the probability of flooding from all sources and the risks involved into account when preparing development plans...”

and in paragraph 156:

“156. Local development plans should:

- Identify sites or areas constrained by flood risk on the basis of the risk framework
- Safeguard the flood storage capacity of functional flood plains....”

SEPA considers that the local plan does not accurately identify the area at risk from flooding in relation to the GS/H1 site and presently does not safeguard the flood storage capacity of the functional flood plain.

Water Environment and Water Services (Scotland) Act 2003

In March 2006, the Scottish Ministers made an order designating local councils and other bodies as “responsible authorities” under section 2(8) of the Water Environment and Water Services (Scotland) Act 2003 (“WEWS” or “the Act”). The purpose of these designations was explained in the accompanying policy statement issued by the Scottish Executive:

*“Bodies designated under the Act will take into consideration the aims and principles of the Water Framework Directive in carrying out their statutory functions, where these duties have an impact on the water environment... [They] will be required to work co-operatively and to take an active part in the river basin management planning process. [They] will also have to consider **flood management and sustainable development...**”* (SEPA’s highlighting)

Section 2(4) of WEWS additionally requires Scottish Ministers, SEPA and responsible authorities, in exercising their respective functions, to:

“(a) have regard to the social and economic impact of such exercise of those functions,

(b) so far as is consistent with the purposes of the ... designated function in question-

*(i) **promote sustainable flood management,** and*

(ii) act in the way best calculated to contribute to the achievement of sustainable development, and

(c) so far as practicable, adopt an integrated approach by co-operating with each other with a view to co-ordinating the exercise of their respective functions.” (SEPA’s highlighting)

WEWS does not give a definition of Sustainable Flood Management and whilst this precognition is not the place to undertake a detailed discussion on definitions and practices of sustainable flood management, the Scottish Executive National Flooding Framework recognised that flooding issues would be tackled through 4 key areas for action; Awareness, Assistance, **Avoidance** and Alleviation (SEPA’s highlighting). SEPA is of the view that avoidance is a key aspect of sustainable flood management. SEPA considers that the allocation of sites at potential risk of flooding does not accord with the duties placed upon Local Authorities under the WEWS Act.

SEPA therefore maintains its objection to this housing allocation in the local plan until a revised FRA has been agreed and the housing allocation boundary altered accordingly. SEPA notes that no specific land supply has been allocated to the GS/H1 site but notes that in Table 4: Phased land supply by local authority area, page 46 of the Plan that 250 dwellings are allocated to Grantown on Spey with 70 dwellings envisaged during the life of the Plan.

SEPA requests that these figures are reassessed in light of the flood risk assessment to ensure that these will be correct before the final plan is adopted.

Recommended Modification:

In light of national planning policy, guidance and advice, SEPA therefore seeks a recommendation from the Reporter that the Council includes the following modification prior to adoption of the Moray Council Local Plan.

Modification 1. The modification would amend the site boundary of the GS/H1 allocation to not include the area judged to be within the “Medium to high risk area” as defined by SPP 7’s Risk Framework. And that Table 4 is amended, if required, accordingly.