

**Cairngorms National Park Local Plan Inquiry  
Objector Reference: 447**

**STATEMENT OF CASE**

**On behalf of**

**Scottish and Southern Energy plc and its Subsidiary Companies**

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# 1 Introduction and Background

- 1.1.1 The Cairngorms National Park Authority ("CNPA") published the Consultative draft of the Cairngorms National Park Local Plan in 2005. The plan was published as an "issues and options" draft. Consultation was undertaken up until the publication of the Deposit Local Plan. The consultation process was undertaken on an informal basis to inform the content of the Deposit Local Plan.
- 1.1.2 The Cairngorms National Park Deposit Local Plan was formally placed on deposit on 9<sup>th</sup> July 2007, after having been approved for consultation purposes by the CNPA Board on 15<sup>th</sup> June 2007. The consultation period ran from 9<sup>th</sup> July 2007 to 28<sup>th</sup> September 2007.
- 1.1.3 Jones Lang LaSalle, on behalf of Scottish and Southern Energy plc and its subsidiary companies ("SSE"), submitted a detailed representation to the Deposit Local Plan, dated 28<sup>th</sup> September 2007. The representation was submitted as a positive contribution to the formulation of the Local Plan as a whole. The representation contained specific objections to a number of individual policies as well as an objection to the lack of definition (in the text and spatially) of the National Park's "special qualities". The specific policy objections were generally based on inconsistencies with national planning policy and advice, namely National Planning Policy Guideline (NPPG) 14 "Natural Heritage", the then Scottish Planning Policy (SPP) 1 "The Planning System"<sup>1</sup>, Planning Advice Note (PAN) 49 "Local Planning", and SPP 6 "Renewable Energy".
- 1.1.4 In response to the representations and objections to the Deposit Local Plan, "proposed modifications to the plan" were presented to and considered by the National Park Board on 30<sup>th</sup> May 2008. These were approved by the Board for formal public consultation, which took place between the 16<sup>th</sup> June and 25<sup>th</sup> July 2008.
- 1.1.5 The proposed modifications ('First Modifications') to the Local Plan did not adequately address the objections lodged by SSE. A further letter of representation was submitted by SSE to the CNPA on 25<sup>th</sup> July 2008.
- 1.1.6 The CNPA wrote to Jones Lang LaSalle on 5<sup>th</sup> November 2008 detailing the proposed changes to the Local Plan, referred to as "Second Modifications". The Second Modifications were consulted upon between 7<sup>th</sup> November and 19<sup>th</sup> December 2008 and SSE submitted a further representation on 16<sup>th</sup> December 2008 confirming that all previous objections were to be maintained with the exception of that in relation to Policy 30 "Integrated and Sustainable Transport Network".
- 1.1.7 This Statement of Case (SoC) is submitted on behalf of SSE to provide the particulars of the case to be advanced at the Local Plan Inquiry hearing sessions with regards to the unresolved matters of objection.
- 1.1.8 SSE's case is set out in detail within Chapter 2.
- 1.1.9 However, of the several objections submitted to the draft Local Plan, there are common themes, which are summarised as follows:

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<sup>1</sup> SPP 1 has been superseded by Scottish Planning Policy since the original Local Plan objections were lodged

- Inadequate recognition of the particular circumstances relevant to electricity transmission, distribution and renewable energy generation projects; which, by their nature, can often involve significant environmental effects;
- No proper explanation or understanding shown in the plan as to the Park's "special qualities" and, in particular, no spatial analysis or locational guidance as to where electricity infrastructure or renewable energy generation projects should or should not be located; and
- Highly restrictive position adopted in relation to renewable energy generation projects, which, it will be submitted, is contrary to government policy on renewable energy and the terms of SPP 6 and the SPP (Consultative Draft, April 2009).

1.1.10 Accordingly, the objections submitted by the company raise very significant issues of national importance and the position of the Authority requires to be closely scrutinised. That statement applies with all the more force in light of the deletion of draft policy 20A: "Transmission and Distribution" of the consultation draft Local Plan and the "in principle" objection which the Authority maintained at the Beaully-Denny public inquiry to the placing of an overhead transmission line within the boundaries of the National Park.<sup>2</sup>

1.1.11 Policy 20A of the Consultation Draft provided that "*all new cabling for power and telecoms should be routed underground.*" The draft policy was therefore designed to ensure that no new overhead electricity lines (at either transmission or distribution voltages) or telecoms infrastructure would be erected within the National Park. Although that draft policy has been deleted, the draft policies which remain, and to which SSE has objected, are provided in such stringent terms that if adopted and applied by the Park Authority in relation to infrastructure projects of any significant scale there is, prima facie, likely to be non-accordance with the Development Plan. For the reasons set out in detail in the following sections of this Statement of Case, such an approach to electricity or telecoms infrastructure is unwarranted and contrary to national planning policy.

1.1.12 As a preliminary comment, however, the concern held by SSE is that although policy 20A has been deleted, the failure to modify the draft local plan policies in light of SSE's objections, or to qualify or explain how those policies are intended to apply in relation to overhead transmission or distribution infrastructure<sup>3</sup>, is indicative of a policy of opposition to such grid infrastructure within the National Park. Furthermore, if there is on the part of the Authority

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<sup>2</sup> SSE has no intention of revisiting the merits or otherwise of the Beaully-Denny project which has been the subject of a lengthy public inquiry and is currently before the Scottish Ministers for consideration. Accordingly, whilst reference will be made at the Hearings to the work which Scottish Hydro Electric Transmission Limited (SHETL) carried out in relation to the "special qualities" of the National Park it is simply to illustrate and explain how that work can be done. The Reporters will not be invited to form any conclusions as to whether SHETL's approach to the "special qualities" affected by the Beaully-Denny project is in fact correct – that is a matter for the Reporters to the Beaully-Denny Inquiry and the Scottish Ministers. Similarly, reference is made to Park Authority's position at the Beaully-Denny inquiry in order to set the context for the concerns which SSE hold over the draft local plan, not to seek to persuade the Reporters that the particular issues debated at the Beaully-Denny inquiry should be resolved in SHETL's favour. In other words, a clear distinction requires to be drawn between the matters considered at the Beaully-Denny inquiry (the merits of the project) and the matters which are properly for consideration at this local plan inquiry (the local plan policies). The draft local plan policies are, however, of potential relevance to the Beaully-Denny project in the event that the Scottish Ministers decision on the Beaully – Denny project may require SHETL to reconsider routing options (including underground alternatives) within the National Park.

<sup>3</sup> Similar concerns relate to telecoms apparatus which were formerly dealt with in draft Policy 20A.

a preference for underground cabling of any electricity infrastructure (albeit unexpressed in the current draft local plan) such projects carry with them their own environmental challenges and are also, prima facie, apt to come into conflict with the policies of the draft local plan. As matters stand, therefore, SSE are left in a position of not having clear guidance from the local plan on 3 fundamental issues:

- whether, in principle, it is the National Park Authority view that it is acceptable to place electricity transmission or distribution infrastructure within the National Park
- if, so, whether the National Park Authority hold a preference as to the technology (overhead or undergrounding) to be employed (or by contrast, whether the choice of technology should be justified according to specified criteria), and
- the locations, areas or corridors, within the National Park which should be considered or avoided when formulating proposals for electricity transmission or distribution infrastructure.

1.1.13 It will be submitted at the Hearings to be held in respect of SSE's objections that such a situation is wholly unacceptable, in particular given the statutory and licence obligations incumbent upon SSE group companies, which will be explained.

1.1.14 A local plan should contain the Authority's proposals for the development and use of land. It is unlawful to hold a separate non-statutory policy which ought to have been the subject of public scrutiny through a local plan process (*Westminster City Council v Great Portland Estates plc* [1985] A.C. 661). Accordingly, the **Park Authority is called upon to confirm in writing:**

- whether the Park Authority holds any policy on: i) the acceptability of placing electricity transmission or distribution infrastructure (whether overhead line or underground cable within the Cairngorms National Park or ii) the location or locations where such infrastructure should or should not be located;
- if so, the content of any such policy and any document within which it is expressed.

1.1.15 Procedural matters are referred to in Chapter 3 and documents are referred to in Chapter 4.

## 2 The Case

### 2.1 Introduction

2.1.1 In summary, the case that will be advanced by SSE relates to the lack of clarity and precision within individual policies, inconsistencies between policies within the plan and their general inconsistency with national planning policy and advice; including, SPP, SPP 6, Circular 1/2009, Circular 12/1996, NPPG 14 and the principles and guidance within the revoked PAN 49<sup>4</sup>. In addition, it is considered that the plan fails to appropriately define and explain the ‘*special qualities*’ of the National Park and does not provide adequate guidance on the extent of special qualities and where they are located. The objections to the plan have been lodged by SSE with regard to their transmission, distribution, telecoms and renewable energy interests within the park as well as their licence holder obligations (these are referred to within part 2.2 of this SoC).

2.1.2 Depending upon the outcome of discussions with the CNPA, prior to the commencement of the Local Plan Inquiry, some matters of objection set out within this SoC may not require to be addressed in oral evidence at the Inquiry. A meeting has already taken place between SSE’s consultants and the CNPA to specifically discuss the content of the CNPA’s draft topic paper on ‘special qualities’. However no significant matters of objection were resolved at this meeting with the CNPA, as it is clear that the CNPA’s approach to defining special qualities continues to be provided, in our view, in a disjointed manner, with no clear guidance for developers and investors on where the special qualities are located and to the degree of their extent. This is referred to further below.

### 2.2 Transmission and Distribution Licence Holder Obligations

2.2.1 Both SHETL and Scottish Hydro Electric Distribution plc (‘SHEPD’), subsidiary companies of SSE, have existing electricity infrastructure within the park and due to the statutory and licence obligations applying to them (outlined below) may be required to install further electricity infrastructure.

2.2.2 SHETL and SHEPD are licensed companies under the terms of section 6 of the Electricity Act 1989 (“the Act”). Both companies are, pursuant to section 9 of the Act, required to:

- (a) develop and maintain an efficient, co-ordinated and economical system of, in the case of SHETL, electricity transmission and in the case of SHEPD, electricity distribution; and
- (b) facilitate competition in the supply and generation of electricity.

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<sup>4</sup>During February 2009, Circular 1/2009 ‘Development Planning’ revoked PAN 49 ‘Local Planning’. PAN 49 still remains as a good practice document, and considering that neither Scottish Planning Policy or Circular 1/2009 provide guidance on matters relating to the drafting of Local Plans (they offer guidance on the new style Local Development Plans and Strategic Development Plans), the principles provided within PAN 49 may be referred to during the hearing sessions. .

- 2.2.3 Section 38 and Schedule 9 to the Act, place specific, requirements on SHETL and SHEPD with regard to the preservation of amenity and fisheries in Scotland.
- 2.2.4 Pursuant to Section 16 of the Act SHEPD is under (save for certain exceptions under section 17) a duty to connect any premises to its distribution system when required to do so by the owner or occupier of premises.
- 2.2.5 In addition, both SHETL and SHEPD have licence obligations to provide for connections to their respective systems and in relation to SHETL an obligation to provide transmission services. Indeed both companies are given specific powers such as the power to compulsorily acquire land and obtain necessary wayleaves to enable the installation, construction and operation of electricity infrastructure.
- 2.2.6 Finally, both SHETL and SHEPD are required to comply with industry documents and Codes such as the GB Security and Quality of Supply Standard, Grid Code, SO-TO Code, Distribution Code, Connection and Use of System Code and Distribution Connection and Use of System Agreement.
- 2.2.7 Copies of the relevant extracts from the Act and SHETL and SHEPD Licences will be provided together with further information in respect of the impact on the companies in respect of its existing and any potential future infrastructure within the park.

## 2.3 Principal Lines of Argument

### Policy 1 'Development in the Cairngorms National Park'

- 2.3.1 It is SSE's position that, among other matters outlined below, Policy 1 is particularly unclear in terms of whether one or all of the policy criteria require to be complied with for development proposals to be found to be in accordance with the policy as a whole. In the supporting text at paragraph 3.10 it is stated that "Developments must comply with all relevant policies in the Plan to comply with Policy 1". It is unclear whether this statement is intended to require compliance with each of the constituent elements of policy 1 or whether, as it appears to state, there must be compliance with each and every policy in the plan in order to comply with Policy 1. It is also considered that criteria (b) and (d) are in conflict with one another in their respective treatment of adverse effects on the Park's "special qualities". There is a difference in approach as to the magnitude of adverse effects that would give rise to potential non-accordance with the policy. Part (b) refers to 'significant' adverse effects but part (d) simply refers to 'adverse effects'.
- 2.3.2 In addition, part (b) requires any significant adverse effects on the special qualities of the Park to be "clearly outweighed" by, amongst other things, "social or economic benefits of **national importance**". At first glance that wording appears to be consistent with paragraph 25 of NPPG 14: "**Development which would affect a designated area of national importance should only be permitted where:**
- the objectives of designation and the overall integrity of the area will not be compromised; or
  - any significant adverse effects on the qualities for which the area has been designated are clearly outweighed by social or economic benefits of national importance."

- 2.3.3 SSE accepts that it is a legitimate concern of the Park Authority to seek to protect the special qualities of the Park. However, as the quotation from paragraph 25 makes clear, national planning policy is to the effect that development affecting an area of national importance can be justified in one set of circumstances (bullet 1) “or” another (bullet 2). Part (b) of policy 1, whilst consistent with the wording of bullet 2 of paragraph 25 is *inconsistent* with paragraph 25 as a whole since no opportunity is provided to a development which may have significant adverse effects on special qualities (bullet 2) but which does not compromise the objectives of designation and the overall integrity of the National Park (bullet 1). Therefore, the requirements of criterion (b) go well beyond any sensible or proportionate approach to adverse effects within the Park and are at odds with national planning policy. This can be illustrated as follows.
- 2.3.4 Even relatively small scale developments can give rise to significant environmental effects and, given the broad approach which the Park Authority takes to the “special qualities”, it can easily be seen that such a development could have a significant adverse effect on one or more of those special qualities. The development may, however, meet important strategic or local planning needs, and appropriate mitigation may have been designed in order to reduce or offset the environmental effects such that there is no prospect of there being any compromise to the objectives of designation and overall integrity of the National Park. In short, the development may be of real benefit to the Park and those who live, work and recreate within it, but the absence of any “social or economic benefits of national importance” would mean that the development failed to accord with criterion (b) of Policy 1. Whether or not that failure would amount to non-accordance with the policy as a whole is unclear, as explained above. Insofar as SSE’s interests are concerned, policy 1(b) would, it is submitted, place unreasonable constraints on the ability of its group companies to design and build transmission and distribution infrastructure within the National Park. That position cannot be justified having regard to the statutory and licence obligations which are explained above.
- 2.3.5 Insofar as renewable energy generation projects are concerned, the stipulation that the adverse effects are “clearly outweighed” by “social or economic benefits of national importance” invites arguments to be had as to whether the renewable energy capacity which such a project would offer was of “national” importance and if so whether the adverse effects were “clearly outweighed” even where there is no prospect of there being any compromise to the integrity of the National Park. Such arguments would fall foul of government policy which is to the effect that any contribution to renewable energy targets is to be welcomed, provided that the environmental effects are acceptable.
- 2.3.6 Similarly, criterion (d) of policy 1 requires “adverse effects” (i.e. not even those which are “significant” in EIA terms) to be “clearly outweighed by the development’s positive contribution” to one or more of the other aims or special qualities. Here, again, insofar as SSE’s interests are concerned, criterion (d) is overly restrictive. For instance, a transmission line routed through the Park may serve regional or national interests but it is very unclear how the plan would expect the line, as a piece of infrastructure, to “positively contribute” to aims and qualities which are restricted to the National Park itself. Similarly, would an overhead distribution line serving a



housing scheme “positively contribute to one of the National Park aims, particularly the first aim which is overriding?”

- 2.3.7 SSE hold major concerns, therefore, that the current draft policy 1 sets wholly unreasonable thresholds of acceptability such that projects in which it has an interest are likely to come into conflict with that policy. This is further illustrated within document SSE - 3).
- 2.3.8 It is also SSE’s position that the plan, as the primary land use planning document, should provide appropriate and clear guidance for developers on the spatial distribution and extent of the Park’s “special qualities”. Without such guidance, there is no context for the use of that term in Policy 1. Paragraph 3.2 of the supporting text states that: “The Local Plan takes its lead from the National Park Plan in directing development to the locations that will best deliver the Park’s aims or avoid significant conflict with the aims”. Regrettably, that statement is no more than an unfulfilled aspiration in the current draft local plan. This is particularly concerning for SSE in terms of there being a lack of clear guidance on which to base future investment and development decisions. Further elaboration is provided below in relation to the landscape policy.
- 2.3.9 It is also considered that the policy does not make appropriate provision for mitigation measures to be provided as part of development proposals, to mitigate significant adverse environmental effects. In this regard requiring “*enhancement of qualities or features of equal importance to the National Park*” is unreasonable and impractical and also inconsistent with Circular 12/1996. It is also SSE’s position that the policy is inconsistent with Scottish Planning Policy, Circular 1/2009 and good planning practice.
- 2.3.10 Specific recommendations on policy rewording, which would address the applicant’s objections to this policy, with the exception of that regarding special qualities, will be provided within Document SSE - 3

### **Policy 3 ‘Other Natural Heritage Designations’**

- 2.3.11 Policy 3 more closely reflects the terms of paragraph 25 of NPPG 14, in particular by making it clear (through the use of the word “or”) that there are alternative means by which compliance with the policy can be achieved. However, the wording of the second bullet of paragraph 25 has been added to by requiring adverse effects on the natural heritage to be: “... *mitigated by enhancement of qualities of equal importance to the natural heritage designation*”. Such a policy requirement is not contained within or recognised by NPPG 14 ‘Natural Heritage’. It would be more appropriate for the policy to refer to ‘appropriate mitigation measures’. Reference to “*features of equal importance*” is also considered to be particularly unclear and together with “enhancement” would require subjective interpretation on the part of the CNP to establish what “*features of equal importance*” are and what such enhancement might entail. Standing the statutory and licence obligations incumbent on SSE group companies, referred to above, it is important that the plan takes into account the constraints which are placed upon these companies. An unrealistic approach to enhancement measures could conceivably threaten the economic viability of a necessary project.

2.3.12 The policy drafting is considered to be contrary to the thrust of and intent of Scottish Planning Policy, which requires policies to “provide a clear indication of how a decision maker will react to a proposal” and “contain policies and proposals that will achieve predictable outcomes”. It is also SSE’s position that the policy is particularly unclear with regard to how developers might, in practical terms, comply with part (b) of the policy.

2.3.13 It is therefore SSE’s respectful submission that policy 3 is unnecessarily restrictive and inconsistent with national planning policy. Alternative policy wording that would address this unresolved objection is provided within Document SSE - 3. SSE would confirm that it is content that its objection to this policy is dealt with as a written submission (this includes the previous objections as well as the above), however, the objections require to be read in the context of the wider case contained within this SOC.

#### **Policy 4 ‘Other Important Natural and Earth Heritage Sites and Interests’**

2.3.14 SSE wish their objection to this policy to be considered by way of written representations, however, the objections require to be read in the context of the wider case contained within this SOC.

2.3.15 It is SSE’s position that the policy, and the supporting text within the plan, lacks clarity with regard to defining “regionally or locally important site[s]” and “features of commensurate or greater importance”. In particular, the paragraph added as para 4.24 is full of jargon and difficult to comprehend. This lack of clarity is considered to be contrary to the advice contained within SPP, particularly paragraphs 15 - 18. It is SSE’s position that it would be more appropriate to refer to ‘appropriate mitigation’, as the circumstances in each proposal for development, when considering the individual merits, will be quite different. This is likely to require a different approach to mitigation in each case, which may be other than providing ‘features of commensurate or greater importance’.

2.3.16 It is also SSE’s position that additional wording is added to the supporting text of the plan to describe what is meant by “provision of features”, or that the term is rephrased. It would not be possible to provide features as referenced within policy, e.g. semi-natural ancient woodland. Alternate wording will be provided within Document SSE – 3, which if implemented within the plan would resolve this objection.

#### **Policy 7 ‘Landscape’**

2.3.17 It is SSE’s position that the drafting of this policy is also overly restrictive. The policy presumes against developments which do not make a “positive contribution” to the landscape character of the Park, thus presuming against developments which have a neutral effect or an adverse effect which has been appropriately mitigated. Furthermore, both parts (a) “and” (b) of the policy must be satisfied. Surely, if part (b) of the policy can be satisfied, in that adverse effects have been appropriately mitigated, there should be no additional requirement for developers to demonstrate that “there is no alternative solution”?

2.3.18 It is considered that the requirement of criterion (a), offends the basic planning principle that all development proposals should be considered individually on their own merits. The availability of an alternative site for a development is generally not relevant to the determination of a planning application although it can become a

material consideration in certain circumstances.<sup>5</sup> However, even in the context of the obligations which fall upon a developer of EIA development under the Environmental Impact Assessment (Scotland) Regulations 1999, what is required is an explanation of the “main alternatives” which have been studied. This is very different from a stipulation that there must be “no alternative” (presumably whether that alternative is within or outwith the National Park). Thus, PAN 58 states that “It has always been good practice for the ES to report on the alternatives considered by the applicant and it is a requirement of the 1999 Regulations. The reporting has not amounted to a full ES on each alternative, even where they have been significantly different, but has given an outline of them and explained how the choice between them was made” (paragraph 69). The practicalities of the matter are also recognised at paragraph 71: “The Regulations do not require the applicant to “invent” alternatives where none has been considered (although the lack of alternatives should be explained). It is accepted that the alternatives available will be constrained by economic and operational reasons”. In other words, it is submitted, “alternatives” are to be taken as real, practical alternatives which have been taken forward and studied by the applicant. There is no national planning policy to the effect that development within a National Park can only be justified where there is “no alternative”. Indeed, to the contrary, paragraph 25 of NPPG 14 begins with the words “The presence of a national natural heritage designation is an important material planning consideration. **This does not mean that development is precluded by the presence of such a designation.**” (emphasis added). Nor is there any support from the terms of the National Parks (Scotland) Act 2000 or the designation order for the Cairngorms National Park.

2.3.19 It can be foreseen, therefore, that many projects are of such a nature that they will have significant adverse effects on at least one aspect of the landscape character of the National Park. Taking a transmission line as an example, an “alternative solution” would be to re-route the line so as to avoid the National Park altogether with the unfortunate result of greatly increasing the overall length of line or, perhaps, causing significant adverse environmental effects upon other valued landscapes. Such an approach would, it is submitted, be difficult to justify in environmental terms. Similarly, it may well be possible to develop a renewable energy generation scheme outwith the National Park which would amount to an “alternative solution” even if that meant giving up the potential for a scheme within the Park which could make a valuable contribution to national and local renewable energy targets without adversely affecting the integrity of the National Park as a whole. The policy can also be considered to be at odds with policies 1 and 3, which allow significant adverse effects to be balanced against ‘social and economic benefits’ rather than requiring alternatives to be considered.

2.3.20 It is submitted, therefore, that the terms of policy 7 should be amended to either delete altogether the reference to “alternative solutions” or to consider in a more balanced way the extent to which potential alternatives will be relevant.

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<sup>5</sup> See Simon Brown J in *Trusthouse Forte Hotels Ltd v Secretary of State for the Environment* (1986) 279 E.G. 680: “[Where] there are clear planning objections to development upon a particular site then it may well be relevant and indeed necessary to consider whether there is a more appropriate alternative site elsewhere. This is particularly so when the development is bound to have significant adverse effects and where the major argument advanced in support of the application is that the need for the development outweighs the planning disadvantages inherent in it”

- 2.3.21 A further source of difficulty is that the policy does not seek to direct development to suitable sites; it lacks appropriate clarity for developers, and is inconsistent with the thrust of Scottish Planning Policy and good planning practice. No attempt has been made, for instance, to map out those areas of the National Park where the landscape character and “special qualities” are particularly rich or fragile such that development in those areas should be avoided. SSE’s position in relation to the “special qualities” is set out in more detail below but insofar as landscape is concerned, it is to be noted that Dr Bill Band of Scottish Natural Heritage confirmed during evidence to the Beauldy-Denny public inquiry that there was a need for spatial differentiation and zoning within the Park, which SNH wanted to see reflected in planning documents relating to the Park<sup>6</sup>.
- 2.3.22 With regard to Core Document 7.28, ‘Officer proposed post inquiry modifications, as presented in statements of evidence’, the recommended changes by the CNPA to the policy wording significantly alter the policy, contrary to previous modifications to the plan. It is the company’s position that replacing “significant” with “any”, when referring to adverse effects is wholly inappropriate. Referring to ‘significant adverse effects’ rather than ‘any’ is more appropriate for inclusion within policy, particularly with regard to transmission, distribution, telecom and renewable energy developments which are of a very different nature and scale to traditional development types. Should ‘significant’ be replaced with ‘any’, this policy would be inconsistent with the drafting of criterion (b) of Policy 1 and Policy 16, which refer to ‘significant adverse effects’. It is important that the Local Plan maintains a consistency with regard to the level of adverse effect referenced within policy. It is also SSE’s position, with regard to renewable energy developments, that a policy reference other than to ‘significant adverse’ effects would be contrary to the thrust of SPP 6.
- 2.3.23 Should the proposed post Inquiry modifications to this policy be consulted upon as currently drafted, SSE will object to this policy wording.
- 2.3.24 **Policy 16 ‘Energy Generation’:**
- 2.3.25 Policy 16 is the only energy related policy within the plan. The first modifications to the Deposit Local Plan partly addressed the original objection through amending the policy to make provision for all renewable energy projects, rather than just small schemes. This was achieved by removing the terms “small scale” and “micro” from the policy wording. However, this does not address the totality of SSE’s original objection to the plan.
- 2.3.26 It is pertinent to note that paragraph 4.99 of the supporting text states that the status of the National Park is such that it is “incompatible with the development of large scale energy production schemes”. Therefore, the deletion of the words “small scale” and “micro” has not been followed through into the supporting text which still sets its face against the possibility of large scale renewable energy schemes. Paragraph 4.99 is in conflict with SPP 6, ‘Renewable Energy’, Annex 2 of PAN 45 and the SPP Consultative Draft (April 2009) with regard to the commitment of the Scottish Ministers to increase the amount of energy generated from of renewable sources. In that regard, there is an internal tension within policy 16 as to the circumstances in which a renewable energy

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<sup>6</sup> See para 6.5.15 of part 2 of the closing submissions of SHETL to the strategy session – available in the document library at [www.beauldydenny.co.uk](http://www.beauldydenny.co.uk)

generation scheme would be supported. The last few words of the second paragraph refer to the absence of “any unacceptable impact on the environment” whereas the new words of at the beginning of that paragraph require that there is “*no significant adverse visual or landscape impact, including any cumulative impact*”. Again, the policy may have deleted reference to “small scale” and “micro” but the amended terms are such that, in practice, they would all but rule out a renewable energy scheme of any significant scale. It is submitted that the National Park Authority cannot on the one hand proclaim that it is “supportive of the drive to minimise climate change” whilst, on the other, adopt policies which effectively sterilise the renewable energy potential within the Park. Such an approach is to be deprecated when one considers that climate change is recognised by the Park Plan to pose a threat to the very “special qualities” which led to designation of the Park. It is submitted, therefore, that policy 16 should be amended to provide far greater support to renewable energy schemes which are a) located in the right place having regard to a spatial analysis of the Park’s “special qualities” and b) acceptable in environmental terms, such that they do not undermine the integrity of the National Park. In addition, supporting text should be added to explain the circumstances in which a contribution to renewable energy targets (rather than “minimisation of climate change”) will be taken as support for the “aims of the Park”. A clear statement should be made that efforts to tackle climate change do support the aims of the Park in that they make a valuable contribution to creating an environment which permits those aims to be achieved.

- 2.3.27 It is also SSE’s position that the reference within the policy to the ‘*strategic objective regarding energy production*’ requires to be clarified. This strategic objective, as provided within the Cairngorms National Park Plan 2007, does not recognise commercial renewable energy production. As noted above, in response to SSE’s objections to the plan, Policy 16 was amended to remove references to ‘small scale’ and ‘micro’ in order to be consistent with SPP 6. Alternate policy wording or additional supporting text to address this inconsistency will be recommended for inclusion within the Local Plan and will be referenced within Document SSE - 3.
- 2.3.28 Policy 16 also refers to transmission and distribution infrastructure. The policy requires transmission and distribution measures not to have “*any unacceptable impact on the environment*”. Applications for the installation of transmission and distribution measures under the Electricity Act 1989 (as amended) often require an Environmental Impact Assessment to be undertaken in accordance with the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000. It is suggested that the term ‘unacceptable’ be replaced with ‘significant’ to ensure consistency with these Regulations and other policies within the plan.
- 2.3.29 Again, in terms of consistency, when this policy is read alongside Policy 7 and criterion (d) of Policy 1, there is an inconsistency in the nature of adverse effect that is referenced within policy, e.g. ‘any’ or ‘significant’. This requires to be addressed.
- 2.3.30 It is also noted that Policy 16 does not refer to the Highland Council’s Renewable Energy Strategy (HRES), which is a material planning consideration for renewable energy developments within the Park. The HRES is being revised and is due to be issued for public consultation in May 2009. It is suggested that the supporting text to the policy be reviewed and altered to recognise the HRES.

### **Policy 18 ‘Design Standards for New Development’**

- 2.3.31 SSE wish to withdraw all previous objections to this policy on the basis that the following is given due consideration as a written representation.
- 2.3.32 Policy 18 is a modified policy presented within the First Modifications to the Deposit Local Plan. The policy has been modified to combine policy 18 ‘Design Standards for New Development’ and Policy 17 ‘Sustainable Development’. It is SSE’s position that this policy has been drafted primarily to assess traditional forms of development, such as housing and commercial development; and is not properly placed to assess renewable energy and transmission infrastructure proposals. SSE has transmission infrastructure, distribution infrastructure, telecoms infrastructure and renewable energy generation interests within the Cairngorms National Park. This policy would not provide appropriate criteria with which to assess potential future development proposals. It would be appropriate to include a reference within the accompanying text stating that the policy (or aspects of the policy) would not be relevant to the consideration of transmission infrastructure, distribution infrastructure, telecoms infrastructure or certain renewable energy development proposals. It is considered that the policy, as currently proposed, is inconsistent with the thrust of SPP, which requires the Local Plan to include “*Only policies that provide a clear indication of how a decision maker will react to a proposal*” (paragraph 15).
- 2.3.33 Suggested wording for inclusion within the supporting text of the Local Plan will be recommended by SSE within Document SSE - 3. Should the recommendation be incorporated into the plan, this objection would be fully resolved.

### **Policy 20 ‘Developer Contributions’**

- 2.3.34 This policy has been modified between the drafting of the Deposit Local Plan and the Local Plan First Modifications, and has partly taken account of the objections by SSE. It is SSE’s position that the policy does not fully take account of the original objection and still remains inconsistent with the advice contained within Circular 12/96 ‘Planning Agreements’. Reference may also be made to the case of *Tesco Stores Limited v Secretary of State for the Environment and others (1995) 1 WLR 759; (1995) ALL ER 636*.
- 2.3.35 It is SSE’s position that the inconsistency of the policy with the Circular, and case law, rests with the policy requirement for development that would involve the mitigation of adverse effects to ‘normally’ requires a “*contribution in cash or kind towards the additional costs or requirements*”. It is SSE’s position that not all developments, which are likely to give rise to adverse effects will require a developer to make a financial contribution, and as such this should not be referred to within policy as a ‘*normal requirement*’. In the majority of cases it may be that such adverse effects could be adequately mitigated or offset by other means, implemented by a developer and this is in line with guidance as set out in PAN 58 (Environmental Impact Assessment). It is also the case that SHETL and SHEPD, as transmission and distribution licence holders respectively (as explained above), are required to perform their duties in accordance with certain legal

obligations, which would not sit comfortably with this policy requirement. Transmission and Distribution licence holder obligations are referred to within SSE – 3.

- 2.3.36 It is SSE's position that should '*or mitigate adverse effects*' be removed from the policy wording, and the policy wording to remain the same in all other respects, then the policy would be consistent with the terms of the Circular and this would address SSE's objection to this policy.

### **Special Qualities of the National Park**

- 2.3.37 Policy 1 as outlined above, refers to "special qualities" within the policy tests. Special qualities are also referred to within the supporting text throughout the plan. The plan places significant importance on protecting and enhancing the Park's 'special qualities', without defining where they are spatially located and their extent.
- 2.3.38 The Local Plan, as the primary land use planning document for the CNP, does not spatially define special qualities and SSE's view is that it should do so. The National Park Plan 2007 describes spatial qualities but fails to spatially define these. The recent draft paper provided by the CNPA, 'Topic Paper: The Special Qualities of the Cairngorms National Park', seeks to further define how the Park's 'special qualities' can be understood; however, the paper adds little to understanding where and to what extent such special qualities are to be found within the Park. The Park Authority's approach to the definition and understanding of the Park's "special qualities" is textual, requiring, according to the topic paper, an understanding of many individual plan policies and a plethora of existing and future documents (running to what must be several thousand pages). SSE is sympathetic in as much as it is recognised that proper analysis and mapping of the "special qualities" is not an easy exercise – but it is an essential exercise given the reliance which is placed upon those qualities within the plan when considering the acceptability of development proposals. So that developers are provided with open, transparent and practical advice as to the locations which should be considered or avoided it is necessary for a strategic sieving process to be carried out. In a document to be lodged for the hearing, Mark Turnbull, Landscape Architect, will explain how such an exercise can be carried out and reference will be made to the work which informed the position of Scottish Hydro Electric Transmission Limited at the Cairngorms session of the Beauty-Denny public inquiry (in order to demonstrate that such a process can produce spatially meaningful results).
- 2.3.39 It is considered that without a strategic approach to spatially illustrate the location, extent and significance of special qualities; any policy test which includes a reference to special qualities is contrary to good planning practice in that the policy would not be clear, precise, implementable and reasonable in all respects. Without such guidance a policy reference to special qualities would allow the CNPA to take a very subjective approach to assessing development proposals which would provide little certainty for developers and investors. Furthermore, given that policy 1(a) of the plan refers to the "integrity" of the National Park, and that it is recognised that it is the "combination" of the special qualities which makes the Park "unique", it is all the more important to understand where the special qualities come together such that an adverse effect at that location may undermine the Park's integrity. Similarly, a strategic spatial analysis would help developers to understand

how an effect upon the special qualities of one area of the Park would relate to the special qualities of the Park as a whole.

- 2.3.40 Should the CNPA have provided adequate strategic guidance, on a spatial basis, to define special qualities and their extent, it would then be reasonable to expect developers and investors in major development proposals to identify the relevant special qualities, which may be impacted upon by the proposed development. However, it is SSE's position that it would be entirely unreasonable to expect a developer or investor to assess, themselves, where such special qualities lie across the entire Park before then assessing what the effects are within the area affected by the development. Such an approach could only lead to inconsistency since each developer may take a different view as to the spatial distribution of the special qualities.
- 2.3.41 The potential for analysing and mapping the special qualities of a National Park has been demonstrated at the Beauty-Denny public inquiry, as noted above, and also in planning policy documents prepared by the Loch Lomond and the Trossachs National Park. The Loch Lomond National Park Authority have taken the approach whereby the origins and concepts of special qualities have been considered on the basis of character zones. Each character zone is accompanied by a spatial illustration of the contributing parts to the special qualities. This is considered to be good planning practice, consistent with national planning policy and is illustrated within document SSE – 1. This will be referred to in detail at the Hearing.
- 2.3.42 SSE's review of the CNPA's approach to defining special qualities and what this would realistically mean for investors and developments is set out within document SSE - 2



## 3 Procedure

### 3.1 Representation and Witnesses to be Called

3.1.1 It is expected that SSE's case will be led at the hearing session by Mr Marcus McKay, Advocate. It is anticipated that the following will be present in order to assist with the Reporter's questions:

- Mrs Hazel Scott (Senior Solicitor, SSE) will be available to discuss the legal requirements placed on SSE group companies as transmission and distribution licences holder.
- Mr Mike Barlow (System Manager, SSE Distribution) will be available to discuss SSE's current and potential future distribution, transmission and renewable energy interests within the CNP. He can also add further detail on system planning obligations.
- Mr David Bell (National Director, Jones Lang LaSalle) will be available to discuss the land use planning policy matters of the unresolved objections
- Mr Mark Turnbull (Landscape Architect, MTLA) will be available to discuss the CNPA's approach to defining special qualities, the inappropriateness of the CNPA's approach and the implications for developers and investors.

### 3.2 Statement of Common Ground

3.2.1 As identified at the Pre-Inquiry Meeting, the Reporters invited all objectors to consider the potential for reaching agreement with the CNPA on matters of common ground in order to narrow down the scope of matters in dispute at Inquiry. SSE will seek to reach agreement with the CNPA on any matters of common ground prior to the Inquiry.

### 3.3 Availability

3.3.1 Due to the restricted availability of SSE, their legal counsel and their specialist advisors during the month of June (from June 9<sup>th</sup>), it is respectfully requested that, any session involving the company is scheduled to take place during the first three weeks of the Inquiry.

3.3.2 SSE have previously intimated this to the inquiry Programme Officer through their letter of 23 March (this letter was lodged as soon as reasonably possible after the initial timetable had been produced) and through Mr Winter's (Jones Lang LaSalle) email of 1 April.

3.3.3 Neither SSE, their legal Counsel or their specialist advisors are available to attend the CNP Inquiry between the 8 and 26 June inclusive. This is due to commitments on other projects.

3.3.4 SSE can be flexible to attend Inquiry sessions outwith these dates and respectfully request that the Reporters accommodate such Inquiry sessions.

3.3.5 SSE would therefore welcome further discussion on potential Inquiry dates and trusts that the Reporters can be flexible given the circumstances. In addition, SSE has indicated in this Statement of Case that certain objections can now be dealt with by way of written submissions.

## 4 Documents

### 4.1 Introduction

Set down below are a number of documents that are expected to be “Core Documents” and which are likely to be referred to in evidence. Also listed are documents which SSE intend to lodge and rely on.

SSE reserve the right to refer to any additional documents as appropriate resulting from evidence led from other parties.

### 4.2 Suggested Core Documents

It is anticipated that the following documents will be provided by the CNPA as core documents:

#### **CNPA Documents**

- The Cairngorms National Park Local Plan (including First and Second Alterations)
- The Cairngorms National Park Local Plan Consultative Draft October 2005
- National Planning Policy, Advice and Circulars
- Scottish Planning Policy;
- SPP (Consultative Draft, April 2009);
- National Planning Policy Guidance 14 ‘Natural Heritage’;
- Planning Advice Note 49 ‘Local Planning’;
- Scottish Planning Policy 6 ‘Renewable Energy’
- Circular 1/2009 ‘Development Planning’;
- Circular 32/1996 Code of Practice for Local Plan Inquires;
- PAN 45 and its Annexes;
- PAN 58 ‘Environmental Impact Assessment’.

#### **Legislation including Statutory Instruments**

- The Town and Country Planning (Scotland) Act 1997;
- The Planning etc (Scotland) Act 2006;

- The Planning etc (Scotland) Act 2006 (Development Planning) (Saving, Transitional and Consequential Provisions) Order 2008;
- The Town and Country Planning (Inquiries Procedure) (Scotland) Rules 1998;
- The Town and Country Planning (Development Planning) (Scotland) Regulations 2009.

#### **4.3 SSE Documents**

It is anticipated that SSE will rely on the following documents:

1. An Evaluation of the Special Qualities of Loch Lomond and the Trossachs National Park, Technical Appendix to the National Park Plan, submitted to Scottish Ministers (2006).
2. An Evaluation of the Cairngorms National Park Authority Approach to Defining Special Qualities (SSE 2009)
3. Recommended Alterations and Additions to the Policies and Supporting Text of the Local Plan (SSE 2009)
4. The Cairngorms National Park – Establishment of the Park Boundary, Jones Lang LaSalle (2007)
5. The Report on the proposal for a National Park in the Cairngorms (SNH)
6. The Loch Lomond and the Trossachs Consultative Draft Local Plan 2008
7. Scottish and Southern Energy and Their Subsidiary Companies, Interests Within the National Park (SSE 2009)