

CAIRNGORMS NATIONAL PARK AUTHORITY

FOR INFORMATION

Title: EIA Screening determination in relation to application 2023/0004/DET (Change of use of land for siting of 25 lodges, access road and landscaping at Site of Dry Ski Slope, Grampian Road, Aviemore)

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Purpose

1. To update the committee on the EIA screening determination in respect of the application 2023/0004/DET (Change of use of land for siting of 25 lodges, access road and landscaping at Site of Dry Ski Slope, Grampian Road, Aviemore).

Background

2. At the January 26 Planning Committee meeting this year, the Planning Committee considered the above application and resolved to grant planning permission subject to conditions and the conclusion of developer obligations. The work to agree the detail and mechanisms to conclude the developer obligations remains active, involving the CNPA, Highland Council and the applicant. No decision notice for the application has been issued and if it were impossible to conclude the developer obligations, it is also possible that the application would be taking back to committee with a different recommendation.
3. On 6 February 2024, the CNPA received correspondence from a solicitor on behalf of the Badenoch and Strathspey Conservation Group (BSCG) noting that the development was a Schedule 2 development under Environmental Impact Assessment (EIA) Legislation, which means that it requires to be screened for EIA prior to being determined. They noted that unless the CNPA revoked planning permission for the development they would start a Judicial Review process to challenge the decision.

Implications and Actions

4. The solicitor's letter was correct in the sense that EIA screening applied to that application in the same way that it does to most planning applications that the CNPA calls in and determines. Most developments can be described within a broad definition of "urban development" and the National Park is considered to be a "sensitive area" under EIA regulations which means that such development automatically require to be screened to identify whether EIA is required.
5. They were also correct that the EIA screening requires to be undertaken prior to a planning application being determined. However, their contention that determination of a planning application relates to the committee's discussion and resolution rather than the act of granting planning permission which requires a written decision notice confirming approval is not correct. No planning permission has yet been issued, so there is no planning consent that could be revoked.
6. EIA screening is a routine part of the planning team's work. The screening process had been considered during the early stages of this application as it is in all planning applications we call in, but the formal determination had not been issued at the time the committee considered the application. That was remedied immediately once the team realised it and confirms that EIA was not required for that application. On 28 February the solicitor was informed that the EIA screening had been undertaken and that no decision notice for the application had been issued.
7. On 27 March, the solicitor contacted the CNPA again to reiterate their view that it was unlawful for the EIA screening determination to be carried out after the Planning Committee consideration of the application and demanded that unless the CNPA revokes planning permission, BSCG would raise judicial review proceedings.
8. We recognise that there was an error in not completing the EIA screening determination earlier in the application process. This happened at a time of severe staff shortage within the Development Management team and our procedures and internal checks have been refreshed to ensure we don't repeat it. We strongly disagree with the position put forward on behalf of BSCG. It is fact that:
 - a) While the formal EIA screening opinion had not been issued at the time the planning committee considered the application, it has been issued now.

- b) The EIA screening opinion concludes that no EIA is required for the development. We are satisfied that the screening determination makes no difference to the information relevant to the Committee's consideration of the application.
- c) No planning consent has yet been issued and there is no planning permission to revoke. Indeed, the applicant could at this stage still appeal a deemed refusal of the application on the basis that they don't have a decision notice. Under that circumstance, or any other appeal of a consent if one is issued, there are further provisions in the EIA regulations for the Scottish Ministers to undertake EIA screening.

Conclusion

- 9. An EIA screening determination for the application 2023/0004/DET (Change of use of land for siting of 25 lodges, access road and landscaping at Site of Dry Ski Slope, Grampian Road, Aviemore, has been undertaken and no EIA was required. The determination would not change the report or recommendations presented to the Planning Committee in January in any way. The decision notice for the application remains to be issued, so any decision that is issued in future will comply with the requirements of the Town and Country (Environmental Impact Assessment) (Scotland) Regulations 2017.

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