

## Agreement on SNH and CNPA roles in casework in and around the Cairngorms National Park

### Purpose

1. The purpose of this agreement is to outline the respective roles of SNH and CNPA in advising on the natural heritage implications of development control and land-use change casework in and around the Cairngorms National Park, and set out how the two organisations will work together to maximise efficiency and minimise duplication.

### Introduction

2. SNH and CNPA are both are funded from the same part of the Scottish Government and have a strong interest in many of the same issues. CNPA has a particular role in ensuring that the four aims are collectively delivered in a coordinated way by, for example, coordinating public sector inputs to the National Park. Since the establishment of the National Park in 2003, both organisations have developed joint working arrangements that aim to maximise efficiency, minimise unnecessary duplication, avoid conflicting advice, focus each organisation's inputs to where they can add most value, and establish clear roles and responsibilities. Casework arising from planning, forestry, discharge consent and outdoor access plans and consultations is the latest area of work in which new roles and procedures have been agreed. The focus of this agreement is on coordinating casework advice provided by CNPA's Natural Heritage and Visitor Services and Recreation Groups, and that provided by SNH Area and Policy and Advice staff.
3. When it has decided to call-in a planning application, the Board of the CNPA becomes the statutory Planning Authority, supported by the CNPA's Planning Group. In making their recommendations to the Park Authority Planning Committee, the CNPA Planners will consult other parties. This may include other CNPA groups as relevant, including the Natural Heritage and Land Management Group, Visitor Services and Recreation Group, and the Economic and Social Development Group. SNH may also be a consultee. One of the principal aims of this agreement is to clarify the respective lead and supporting roles of CNPA and SNH in delivering casework advice to the Park Authority when exercising its function as Planning Authority. This will result in advice that is more coordinated and cost effective in conserving and enhancing the natural heritage and promoting its enjoyment and understanding. Implementation of this agreement will also release staff resources for other activity, particularly for delivery of the Cairngorms National Park Plan Priorities for Action. It will also help to deliver the Scottish Government's SEARs and Efficient Government initiatives.
4. It is also intended that this agreement will clarify the organisations' respective roles to written and verbal consultations and requests for advice from communities, other agencies, local authorities, and other parties. Copies of this agreement have therefore been sent to Planning Authorities and Forestry Commission Scotland Offices in and around the Park.

5. The Cairngorms National Park is an ideal location to test new approaches to joint working (see para 7). The detailed arrangements outlined in this agreement reflect three other key factors:
- In the discharge of their functions, both organisations have a duty to have regard to the adopted National Park Plan.
  - The need for both organisations to comply with statutory requirements concerning consulting on, and responding to, different types of casework. The key statutory requirements are summarised at Annex 2, along with an explanation of how they will be met in the Cairngorms.
  - The fact that CNPA and SNH have different policies in relation to involvement in some types of non-statutory casework consultations. For example, CNPA has decided not to ask to be consulted on forestry casework, other than forest design plans.

### General principles

- i. CNPA and SNH both share an interest in conserving and enhancing the outstanding natural heritage of the National Park, and promoting its understanding and enjoyment. For both bodies this interest is specifically defined in the founding legislation.
- ii. In general either CNPA or SNH, but not both, will take a leading role on any natural heritage aspect of casework.
- iii. Wherever possible, SNH and CNPA will lead on the aspects of casework indicated in the summary table below. This applies to casework within the Park originating from CNPA as planning authority, and from most other consulting authorities. Annex 1 provides full details on which organisation will provide advice in which circumstances.

Provision of advice concerning effects of case on....	Lead organisation
<ul style="list-style-type: none"> <li>▪ qualifying features of Natura sites</li> <li>▪ notified interests of Sites of Special Scientific Interest (SSSIs)</li> <li>▪ European Protected Species</li> </ul>	SNH
<ul style="list-style-type: none"> <li>▪ other natural heritage interests underpinning the National Park designation</li> <li>▪ all landscape interests underpinning the National Park designation, including those within National Scenic Areas (NSAs)</li> <li>▪ enjoyment of the National Park</li> <li>▪ other special qualities of the National Park</li> </ul>	CNPA

- iv. Both CNPA and SNH can 'opt-in' to any piece of casework on which the other organisation is leading, provided their advice will add value to the other's lead role. For example, CNPA may on occasion wish to emphasise a particular National Park perspective but of course SNH wish to do so too; or SNH may wish to emphasise a different important national perspective or to trigger a

notification to Scottish Ministers for consideration or call-in<sup>1</sup>. The opting-in organisation should discuss their intention so to do, with the lead organisation at the earliest opportunity to ensure that their functions are truly complementary.

- v. If, due to the nature of a case it is sensible for both organisations to have a leading role (e.g. a case that could have impacts both within and outwith the Park's boundary), they will agree the scope of each other's response, and ensure that they do not undermine the other's position. Wherever possible both will aim to use the same source of technical advice and agree on technical assessments of a proposals' level of impact. If different organisational remits mean that SNH and CNPA have different views on the acceptability of these impacts, care will be taken to present advice in a complementary manner and clearly explain the rationale for the differences. In both instances, the two organisations will be informed by the policies and priorities for action in the adopted National Park Plan.
- vi. Both organisations can contact the other organisation for informal discussion, or to offer or request verbal advice at any time during the course of a live case.
- vii. In carrying out their lead roles, both organisations can request data and/or specialist technical advice from the other to inform casework advice e.g. CNPA access to SNH's specialist advisors. If such requests cannot be met, the lead organisation will be informed as soon as possible to allow alternative arrangements to be made.
- viii. Roles in relation to Public Local Inquiries, Planning Hearings and similar processes will be discussed and agreed on a case by case basis. In general the organisation providing the original technical advice should defend it.
- ix. Roles in relation to casework proposals which span the park boundary will be discussed and agreed on a case by case basis. Roles in relation to cases outside the Park that could affect it are described in Annex 1, Section C.
- x. Both organisations will continue to work closely together on developing Plans, Policies and Strategies that set the framework for casework decisions in the Park, and will present advice in accordance with that framework.

### **Timing Implications of CNPA Call-in procedure**

6. The CNPA Planning Committee has a two week period in which to decide whether to call-in planning applications from Local Authorities. SNH also has a two week period in which to respond to Planning Authorities once a consultation has been received. This allows the possibility, in a very small number of cases, of SNH having to respond to consultations from the Local Authority prior to receiving notice of call-in from CNPA. If call-in is considered likely the SNH staff member should contact the consulting authority to explain the situation and enquire whether a short extension to the consultation period is possible to allow SNH and CNPA to coordinate their advice in the manner outlined in Annex 1.

---

<sup>1</sup> There are currently no provisions for objections from CNPA to trigger notification to Scottish Ministers.

## **The future**

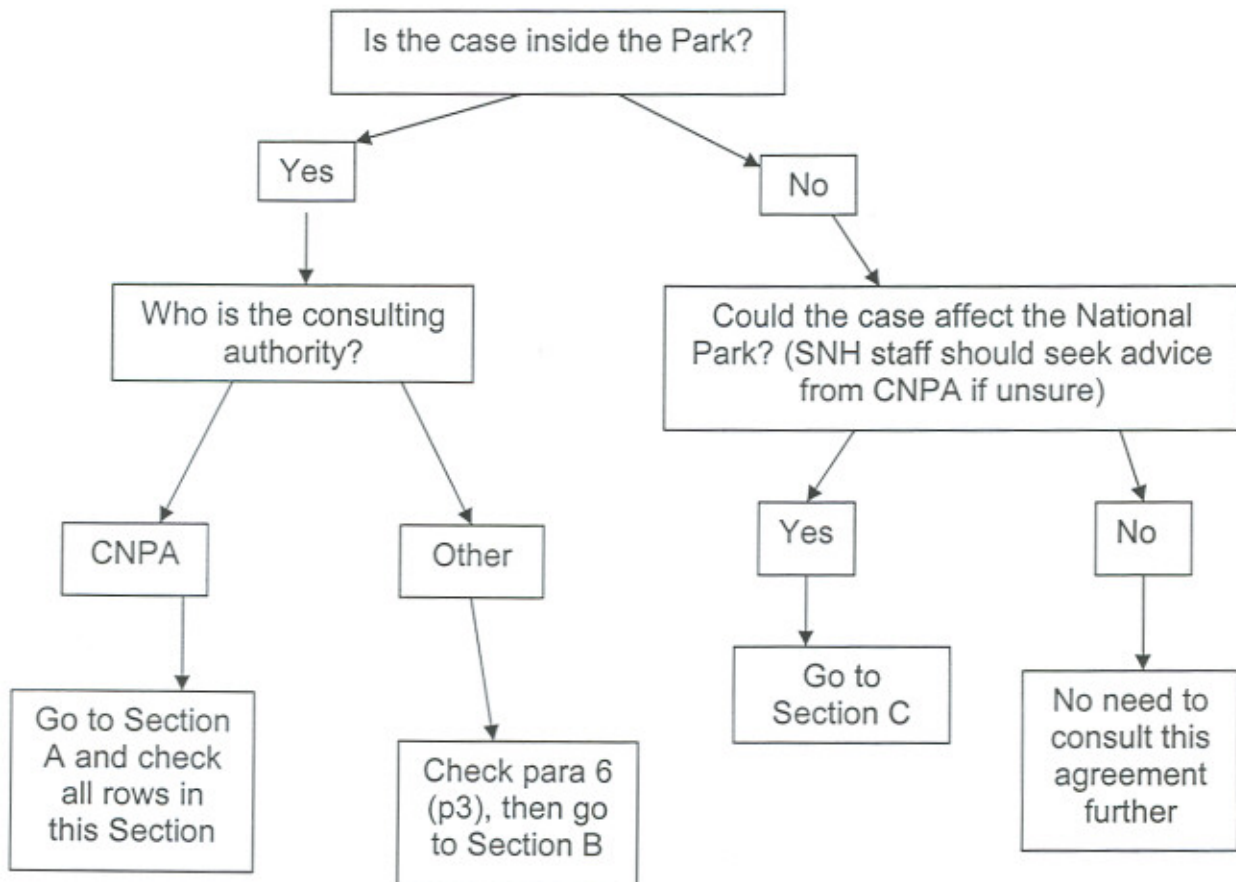
7. The success of this arrangement will be monitored by both organisations. We met to discuss its effectiveness after the first eight months of operation, and agreed some amendments. There will be annual review meetings thereafter.
  
8. Following the establishment of new statutory provisions for NSAs within the Planning (Scotland) Act 2006, the continuing need for NSAs within National Parks is the subject of some debate. Any revision to existing procedures will require this agreement to be revised to reflect the new circumstances. Once the Cairngorms Landscape Management Plan is prepared and agreed, this will provide a key framework for advice on casework affecting landscape interests.

## Annex 1: Roles in different types of casework

The table overleaf explains the new roles of both organisations in relation to different types of casework. The table is split into three sections as follows:

- Section A: Cases where the CNPA is initiating consultation as the Local Planning Authority or Outdoor Access Authority.
- Section B: Cases where another organisation is the consulting authority, and the proposal will take place in the Park.
- Section C: Cases outside the Park which could affect the Park's special qualities.

The following flowchart explains which Section applies in which circumstances.



Type of casework	SNH's role	CNPA's role
<b>A. Planning and Outdoor Access consultations where CNPA is the consulting authority (check <u>all</u> rows prior to responding; several may apply to one case)</b>		
May affect a Natura site (SAC, SPA or Ramsar site)	Lead role on likely significant effects on qualifying features and need for an appropriate assessment. If the advice is that an appropriate assessment is needed, provide available information (conservation objectives and SNH's appraisal) to assist CNPA, and advise on further data that may be needed. Remember responsibility for surveys lies with the developer.	NH&LM group use SNH advice to complete the appropriate assessment, and advise and interpret the appropriate assessment to the Planning Group to assist presentation to the Planning Committee or to Visitor Services and Recreation Group to advise the Board as the Outdoor Access Authority.
May affect a European Protected Species (EPS)	Lead role for all EPS work, providing reasoned advice to CNPA. Remember responsibility for surveys lies with the developer.  <b>NB</b> SNH also has a specific statutory role in species licensing, which is not altered by this agreement.	NH&LM group interpret SNH's advice to the Planning Group as required to assist presentation to the Planning Committee, or to Visitor Services and Recreation Group to advise the Board as the Outdoor Access Authority.
May affect an SSSI	Lead role with respect to potential effects on notified interests.	NH&LM group advise and interpret SNH's advice to the Planning Group as required to assist presentation to the Planning Committee, or to Visitor Services and Recreation Group to advise the Board as the Outdoor Access Authority.
May affect nature conservation or biodiversity interests that are not	Only take the lead role if the case lies within a Natura site or SSSI. If so, include advice	Lead role for all other cases where there is no lead function for SNH.

<p>otherwise internationally or nationally designated, but are part of the special qualities underpinning the National Park designation (including advice on the legal protection afforded to various species).</p>	<p>on wider nature conservation or biodiversity interests present at the proposal site, and the likely effects of the proposal on these interests.</p> <p>Consider whether the proposal offers reasonable opportunities to enhance biodiversity &amp; nature conservation interests. If so, offer advice on positive enhancement measures.</p> <p>[Delete or leave???: Explain the nature of the information source. Do <u>not</u> offer advice on the significance or acceptability of any such effects – CNPA will use SNH’s advice to judge significance.]</p>	<p>[Delete or leave ???: If SNH are advising because the proposal lies within a Natura site or SSSI and they have information available about other nature conservation interests, consider SNH’s advice and determine the significance and acceptability of any likely impacts.]</p>
<p>In NSA, for types of development specified in TCP (Notifications of applications) (NSAs) (Scotland) Direction 1987 (see Annex 2 for details)</p>	<p>Provide supporting advice to CNPA on request.</p> <p>CNPA have statutory duty to consult SNH on these cases; respond using standard paragraph at Annex 3.</p>	<p>Lead role with respect to all landscape and visual impacts, but ensuring a full evaluation of likely implications for the scenic qualities of the NSA.</p>
<p>In or may affect an NSA, but <u>not</u> for a type of development specified in TCP (Notifications of applications) (NSAs) (Scotland) Direction 1987.</p>	<p>Do not advise unless otherwise requested by CNPA.</p>	<p>Lead role with respect to landscape and visual impacts, but ensuring a full evaluation of likely implications for the scenic qualities of the NSA.</p>
<p>May affect</p> <ul style="list-style-type: none"> <li>▪ landscape interests of the National Park outwith NSAs;</li> <li>▪ recreation and outdoor access;</li> <li>▪ wild land or experience of wildness;</li> </ul>	<p>Provide supporting advice if requested by CNPA.</p>	<p>Lead role</p>

▪ greenspace.		
May affect Inventory and Extension Gardens and Designed Landscapes	Do not advise, as role passed to Historic Scotland.	Lead role. Consult Historic Scotland who are the sole statutory consultee.
<b>B. Consultations from other consulting authorities concerning cases in the Park</b>		
Planning casework where Local Authority is determining the application.	Lead role on matters identified in Section A. <b>N.B.</b> In practice unlikely to be consulted because CNPA call-in cases of significance to Park aims, which normally includes all cases that affect designated sites.	Lead role on matters identified in Section A.
Forestry casework: Forest Plans and Forest Design Plans	Lead role on matters identified in Section A.	Lead role on matters of strategic importance as identified in Section A.
Forestry casework: proposals for planting, felling, tracks etc.	No special arrangements – advise as per normal procedures that apply outwith CNP.	Do not advise – CNPA will not be consulted on this type of casework.
Roads and Energy Act casework	Lead role on matters identified in Section A.	Lead role on matters identified in Section A.
Water Environment (Controlled Activities) (Scotland) Regulations 2005 ('CAR') consultations from SEPA	No special arrangements for CNP – advise as per normal procedures that apply outwith CNP.	Do not advise – CNPA will not be consulted on this type of casework.
Environmental Impact Assessments	Ensure fulfil SNH's statutory role (advice on scoping and Environmental Statement; respond to other requests for advice and data). At or before the scoping stage, discuss with CNPA and other relevant advisory bodies (eg. SEPA) to agree roles on a case by case basis, using the roles set out in Section A & elsewhere in Section B as	At or before the scoping stage, discuss with SNH and other relevant advisory bodies (eg. SEPA) to agree roles on a case by case basis, using the roles set out in Section A & elsewhere in Section B as a general guide.

	a general guide. Consider arranging a meeting for this purpose, particularly if there is no formal scoping meeting.	
Strategic Environmental Assessments	<p>If CNPA is the responsible authority, advise as per normal procedures that apply across Scotland ie. fulfil statutory role and cover all significant natural heritage interests.</p> <p>If the responsible authority is not CNPA, if timescales allow seek advice from CNPA on the plan / strategy's effects on landscape, access, wild land and biodiversity interests, and on the national park designation.</p>	No statutory role. If involved, advise on National Park issues, and discuss and agree roles with SNH.
Site-specific proposals within Plans and Strategies (eg Local Plan, Core Paths Plan)	Lead role on matters identified in Section A.	Lead role on matters identified in Section A.
Site-specific proposals in Rural Development Contracts – Rural Priorities	Lead role on matters identified in Section A.	Lead role on matters identified in Section A.
<b>C. Consultations from other consulting authorities concerning cases outwith the Park which could have an effect on the Parks special qualities</b>		
Casework outside the National Park that could have effects on the National Park (often landscape and visual effects)	Advise on all relevant matters that do not have a bearing on the National Park, in accordance with procedures that apply throughout Scotland. If effects on the National Park are possible, discuss with CNPA and agree roles. Refer to General Principle (v). Inform the consulting authority that potential effects on the National Park	Lead role in relation to effects on the National Park's special qualities. If effects on the National Park are possible, contact SNH to discuss and agree roles. Refer to General Principle (v). Inform the consulting authority that CNPA is only commenting on potential effects on the National Park, and that SNH will advise on other natural

	will be addressed by CNPA, not by SNH.	heritage issues.
--	--	------------------

**Annex 2 – Consultation and notification procedures as defined in statute and secondary legislation**

<p><b>Natural Heritage (Scotland) Act 1991</b>                  (2) SNH .... if so requested by the Secretary of State or any general, regional or district planning authority shall, advise the Secretary of State or, as the case may be, the authority in relation to any matter arising under the .. Town and Country Planning (Scotland) Act 1972 which affects the natural heritage of Scotland.</p>	<p>SNH will respond if asked to advise on a planning matter. The new arrangements will reduce the frequency of requests for advice.</p>
<p><b>Habitats &amp; Co Regulations (Scotland) as amended 2004</b>                  48 (3). The competent authority shall for the purposes of the assessment consult the appropriate nature conservation body and have regard to any representations made by that body within such reasonable time as the authority may specify.</p> <p>NB. SNH is not a statutory consultee on applications for planning permission outwith SSSI and Natura areas where European Protected Species alone might be affected.</p>	<p>Competent authorities will consult SNH in relation to European sites, and SNH will advise.</p>
<p><b>Town and Country Planning (Notification of applications) (National Scenic Areas) (Scotland) Direction 1987</b>                  planning authorities are obliged to consult SNH where a "planning authority proposes to grant planning permission for any development falling within a class set out in Schedule 1 to this Direction."                  (i) schemes for 5 or more houses, flats or chalets except for those within towns and villages for which specific proposals have been made in an adopted local plan;                  (ii) sites for 5 of more mobile dwellings or caravans;                  (iii) all non-residential developments requiring more than 0.5 Ha of land;                  (iv) all buildings and structures over 12m high (including agricultural and forestry developments);                  (v) vehicle tracks, except where these form part of an approved afforestation scheme;                  (vi) all local highway authority roadworks outside present road boundaries costing more than £100,000.</p>	<p>SNH will advise by means of standard wording at Annex 3.</p>
<p><b>The Environmental Impact Assessment (Scotland) Regulations 1999</b>                  10. (4) An authority shall not adopt a scoping opinion .....until they have consulted .... the consultation bodies.....                  12. (4) ... any body notified in accordance with paragraph (3) shall, if requested by the person who intends to submit an environmental statement, enter into consultation with that person to determine whether the authority or body have in their possession any information which he or they consider</p>	<p>SNH will respond to all statutory requests for advice in relation to EIAs. Roles will be agreed with CNPA on case-by-case basis.</p>

<p>relevant to the preparation of the environmental statement and, if they have, the authority or body shall make that information available to that person.</p> <p>14. (1) Where a planning authority receive ... an environmental statement ....., they shall</p> <p>..... (c) send a copy of the statement to each consultation body, consult them about it and inform them that they may make representations.</p>	
<p><b>The Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004</b></p> <p>14. (1) ...the responsible authority shall prepare a report on whether or not ... the plan or programme is likely to have significant environmental effects.</p> <p>(2) The responsible authority shall send the report ...to the consultation authorities for their consideration.</p> <p>(3) The consultation authorities shall ... respond to the responsible authority with their views on that report.</p> <p>17. (1) Before deciding on</p> <p>(a) the scope and level of detail of the information that must be included in the environmental report..., and</p> <p>(b) the consultation period...,</p> <p>the responsible authority shall send to the consultation authorities sufficient details of the plan or programme ...to enable them to form a view on those matters.</p> <p>(2) Each consultation authority shall send to the responsible authority its views on the matters referred to in paragraph (1) ...</p> <p>18. (2) ....the responsible authority shall send a copy of the relevant documents to the consultation authorities and invite them to express their opinion on the relevant documents within such period as it may specify.</p>	<p>SNH will respond to all statutory requests for advice in relation to SEAs. CNPA, if also consulted on a non-statutory basis, will discuss with SNH to ensure no unnecessarily duplication.</p>

**Annex 3: Standard paragraph to be used by SNH when responding to statutory NSA consultations in Cairngorms National Park from CNPA**

**1. Where landscape interests alone are affected:**

Dear .....

Thank you for consulting SNH regarding the above development. The proposal is likely to affect..... landscape interests. In accordance with our casework procedural agreement, SNH confirms that consideration of the impact of this proposal on the landscape interests of the Cairngorms National Park will rest with Cairngorms National Park Authority. SNH has no further comments in this respect.

**2. Where landscape interests are one of many interests affected:**

Dear...

Thank you for consulting SNH regarding the above development. The proposal is for .....

**SNH Position**

- Nature conservation interests – designated sites and EPS – as per Appendix V
- Landscape interests – in accordance with our casework procedural agreement, consideration of landscape interests with respect to potential impacts on the National Park rests with the Cairngorms National Park Authority. Accordingly landscape interests are not considered further here.
- Biodiversity interests not connected with designated sites or EPS – in accordance with our casework procedural agreement, consideration of biodiversity issues not connected with designated sites or EPS with respect to potential impacts on the National Park rests with the Cairngorms National Park Authority. Accordingly biodiversity issues not connected with designated sites or EPS are not considered further here.
- Access interests – in accordance with our casework procedural agreement, consideration of access interests with respect to potential impacts on the National Park rests with the Cairngorms National Park Authority. Accordingly access interests are not considered further here.