TRANSPORT AND THE ENVIRONMENT COMMITTEE

AGENDA

34th Meeting, 2002 (Session 1)

Wednesday 4 December 2002

The Committee will meet at 9.15 am in Committee Room 2 to consider the following agenda items:

1. **Declarations of Interests:** The Convener will invite the new member of the Committee to declare any relevant interests.

2. **Items in private:** The Committee will consider whether to take agenda items 4 and 6 in private.

3. **Water Environment and Water Services (Scotland) Bill:** The Committee will consider the Bill at Stage 2 (Day 4).

4. **Cairngorms National Park (Draft Orders):** The Committee will consider possible lines of questioning for witnesses.

5. **Cairngorms National Park (Draft Orders):** The Committee will take evidence from—
   
   Alan Garvey, Head of Planning, Policy and Environment, Aberdeenshire Council
   
   Councillor Sandy Park, Chairman, Planning, Development, Europe and Tourism Committee, Highland Council
   
   Robin Pellew, Chairman, National Trust for Scotland
   
   Graham U’ren, Director, Royal Town and Planning Institute in Scotland

6. **Cairngorms National Park (Draft Orders):** The Committee will consider a draft response to the Rural Development Committee on the orders.
The following papers are attached for this meeting:

| Note from SPICe (private paper) (Agenda item 4) | TE/02/34/1 (to follow) |
| Briefing Paper from SPICe on the Cairngorms draft orders (Agenda item 5) | TE/02/34/2 |
| The Cairngorms National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2003 (Agenda item 5) | TE/02/34/3 |
| The Cairngorms National Park Consultation on Draft Designation Order Section 6 (6) Statement (Agenda item 5) | TE/02/34/4 |
| The Cairngorms National Park Elections (Scotland) Order 2003 (Agenda item 5) | TE/02/34/5 |
| Submission from Aberdeenshire Council (Agenda item 5) | TE/02/34/6 |
| Submission from Highland Council (Agenda item 5) | TE/02/34/7 |
| Submission from National Trust for Scotland (Agenda item 5) | TE/02/34/8 |
| Submission from Royal Town and Planning Institute in Scotland (Agenda item 5) | TE/02/34/9 |

**Papers not circulated:**

Agenda item 3

In addition to the above papers, the Water Environment and Water Services (Scotland) Bill and Accompanying Documents are also relevant to this meeting. Copies of the Marshalled List of Amendments and the groupings of amendments will be available at the start of the meeting in Committee Room 2.
The Scottish Executive published The Cairngorms National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2003 and the Cairngorms National Park Elections (Scotland) Order 2003 on 14 November 2002. This Briefing examines the history of the proposed Cairngorms National Park, summarises the statutory process for designating a National Park in Scotland and outlines the development of the detailed Park proposals. It also looks at issues raised by the publication of the Draft Scottish Statutory Instruments, which set out the Park boundary, powers of the Park Authority and the arrangement of elections to the Park Authority. This is a revised version of SPICe Briefing “Proposals for Cairngorms National Park”, published on 31 July 2002.
CONTENTS

Key Points .................................................................................................................................. 2

Background .................................................................................................................................. 3

Designation of a National Park in Scotland ................................................................................. 4

The development of detailed proposals for a Cairngorms National Park ............................... 5

Reaction to proposals in the draft Designation Order ................................................................. 10

  Planning Powers .................................................................................................................... 10
  Park Boundary ...................................................................................................................... 10

Appendix 1: The Cairngorms – What and where? .................................................................... 12

Bibliography .............................................................................................................................. 13

KEY POINTS

- **1997:** The Scottish Office announces its intention to introduce legislation that will allow the designation of National Parks in Scotland and asks Scottish Natural Heritage (SNH) to develop proposals for possible National Parks

- **1999:** SNH submits proposals to the Scottish Executive for National Parks covering Loch Lomond and the Trossachs, and the Cairngorms

- **2000:** The National Parks (Scotland) Act 2000 is passed by the Scottish Parliament. The Scottish Executive publishes its initial proposals for a National Park in the Cairngorms, based on the SNH proposals

- **2001:** SNH, designated as reporter by the Scottish Executive, publishes comprehensive proposals for the Cairngorms National Park

- **2002:** Loch Lomond and the Trossachs becomes Scotland’s first National Park

- The Scottish Executive publishes a consultation draft of the Cairngorms National Park Designation Order. The proposed Park is some 50% smaller than that recommended by SNH, a move criticised by some third parties, many of which are also concerned about the proposed planning functions of the National Park Authority (NPA)

- The Scottish Executive publishes draft Scottish Statutory Instruments which define the Park boundary, powers of the NPA and establishes procedures for NPA elections. Despite a 50% increase in the area of the Park there is continued criticism of the proposals from some organisations, although general support from the local authorities involved
BACKGROUND

“It was so calm, and so solitary, it did one good as one gazed around; and the pure mountain air was most refreshing. All seemed to breathe freedom and peace, and to make one forget the world and its sad turmoils.”

The process leading to the designation of the Cairngorms as a National Park has been ongoing for well over 100 years. Various governments have been considering such a designation for over 70 years. This section briefly summarises this history up until the introduction of the National Parks (Scotland) Bill in 2000.

The designation of National Parks in Britain was first considered by the National Parks Committee, created by the UK Government and chaired by Lord Addison, which reported in 1931. The Committee came out against the idea of National Parks, instead proposing a system of national nature reserves and sanctuaries. The Committee proposed that the Cairngorm Mountains should be covered by such designations. No government action was taken following these recommendations.

The Ramsay Committee, which sat between 1945 and 1947, recommended that the Cairngorms, along with 4 other areas of Scotland, be designated a National Park, however the enabling legislation (National Parks and Access to the Countryside Act 1949) did not extend to Scotland. The five areas proposed by the Ramsay Committee as National Parks were designated as “National Park Direction Areas” which afforded the relevant local authority additional powers to scrutinise development proposals within the designated area.

In 1953 the Cairngorms were designated a national nature reserve. National Park Direction Areas were abolished in 1980. In 1981 the Cairngorms massif and the adjacent upper Deeside and Lochnagar areas were designated as National Scenic Areas.

The former Countryside Commission for Scotland, which was replaced by Scottish Natural Heritage (SNH) following the enactment of the Natural Heritage (Scotland) Act 1991, recommended that the Cairngorms be designated as a National Park in 1991 following a review of Scotland’s mountain areas.

In response to this review the Scottish Office established a Cairngorms Working Party, chaired by Magnus Magnusson, to undertake a detailed review of the needs of the Cairngorms area. The working party published its report “Common Sense and Sustainability” in 1992, which led to the creation of the Cairngorms Partnership in 1994. The Partnership was charged with the preparation and implementation of a Management Strategy for the Cairngorms.

1 Quote from the Diary of Queen Victoria, 18 September 1848, referring to her first sight of the Cairngorms
2 See Annex 1 for a brief description of the location and environment of the Cairngorms
3 See Scottish Natural Heritage website for details of National Scenic Area designation
In 1997 the Scottish Office stated that it would introduce legislation allowing the designation of National Parks in Scotland and indicated that Loch Lomond & the Trossachs should be Scotland's first National Park. SNH were invited to develop proposals as a basis for this legislation.

SNH submitted their advice to the Scottish Office in 1999, which formed the basis of the National Parks (Scotland) Bill 2000.

**DESIGNATION OF A NATIONAL PARK IN SCOTLAND**

The [National Parks (Scotland) Act 2000](#) set out the procedure for designating a National Park in Scotland, as summarised below:

1. Scottish Ministers publish proposals for a National Park. These must specify the general area of the Park and the mechanisms to be adopted for the administration of the planning function in the National Park area.
2. Scottish Ministers appoint Scottish Natural Heritage, and/or any other public body they consider has relevant expertise, to conduct an inquiry into the proposals. Such an inquiry must consider:
   - whether the area proposed should be designated as a National Park
   - the desirability of designating the area in question (with or without modifications) as a National Park
   - the functions which it is proposed the National Park Authority (NPA) for the Park should exercise
   - the likely annual costs and capital expenses of the authority in exercising its functions
   - any other matters as specified by Ministers

Scottish Ministers can direct the body holding the inquiry as to the conduct of any consultation to be carried out as a part of the inquiry.

3. The body holding the inquiry reports back to the Scottish Ministers, who are required to publish the report. At this point Scottish Ministers may choose to hold a public inquiry into any issue relating to the National Park proposals.

4. Drawing on the report, the Scottish Ministers publish a draft National Park Designation Order for public consultation.

5. Following any amendment as a result of the consultation exercise, the Scottish Ministers lay the National Park Designation Order before Parliament.

6. Parliament can either approve or reject the Order, through the affirmative resolution procedure.
THE DEVELOPMENT OF DETAILED PROPOSALS FOR A CAIRNGORMS NATIONAL PARK

This section summarises the key points in the designation of the Cairngorms as a National Park since September 1997, when the UK Government announced its intention to create National Parks in Scotland. It concentrates on the proposals for the Park boundary and planning powers of the National Park Authority as these have stimulated the most comment.

SEPTEMBER 1997: The Secretary of State for Scotland asked SNH to prepare advice as to how National Parks could best operate in Scotland, with a view to the possible designation of National Parks covering Loch Lomond and the Trossachs, and the Cairngorms, by the Scottish Parliament.

1999: Following substantial consultation SNH (1999) submitted its “Advice to Government” report to the Scottish Executive. SNH made the following recommendations about the area of the Cairngorms National Park and the planning powers that could be delegated to the Park Authority.

Boundaries: SNH identified two possible National Park boundaries.

1. A Park with boundaries drawn “to focus on the key natural heritage and informal recreational resources of the area”, based around the Cairngorms massif and including the settlements of Braemar, Ballater, Newtonmore, Kingussie, Kincraig, Aviemore, Boat of Garten, Nethy Bridge, and Tomintoul.

2. A larger area covering that proposed above plus the Drumochter Hills, Laggan, Ben Rinnes and land to the west, parts of middle Deeside, Finzean and the Angus Glens. In considering whether to include these areas within the Park boundaries SNH advised:

   “From responses to the consultation paper, we know that the inclusion of these areas is supported by some of the communities and other interests, and rejected by others. While there would be advantages in terms of conservation management, we consider that the strongest case for inclusion of these areas is based largely on socio-economic grounds”

Planning Powers: SNH advised that local authorities should remain the planning authority under the Town and Country Planning (Scotland) Act 1997 and the Cairngorms NPA should:

- be the principal partner in the preparation of the structure plans covering its area.
  Each local authority would be:
  
  - required to discuss the proposed contents of the structure plan, as it affects the Park, with the NPA
  - to work with the NPA during plan preparation

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to obtain a certificate of conformity with National Park objectives from the NPA prior to submission of the structure plan for ministerial approval

- be the principal partner in the preparation of the local plans covering its area. Each local authority would be:
  - required to agree the proposed contents of the local plan with the NPA
  - work with the National Park Body during plan preparation
  - obtain a certificate of conformity with the National Park Plan from the NPA prior to deposit of the plan

- be the holder of referral powers to the relevant Minister for appropriate cases where it objects to a local authority's development control decision.

**Park Authority:** The Park Authority should include local authority representatives, national appointees and local representatives and be limited to around 20 members.

**19 SEPTEMBER 2000:** In the light of advice from SNH the Scottish Executive (2000) published *“National Park Proposals – Cairngorms National Park”*. The Executive accepted much of what SNH recommended, as can be seen from the summary of proposals below:

**Boundaries:** The Executive supported the adoption of the larger of the two areas for the park proposed by SNH.

**Planning Powers:** The Executive proposed that local authorities should remain the planning authorities under the terms of the Town and Country Planning (Scotland) Act 1997. However, Cairngorms NPA should:

- be a statutory consultee in the preparation of the relevant local plans and structure plans as they affect the National Park
- be a statutory consultee on development control decisions
- be a statutory consultee on other functions exercised by the planning authorities, i.e. tree preservation orders, conservation area and listed building consent, advertisement consent, minerals consent and application of controls relating to hazardous substances.

**Park Authority:** The NPA should consist of 25 members, 5 of which would be directly elected, the remainder appointed by local authorities and Ministers.

The Scottish Ministers appointed SNH, under the National Parks (Scotland) Act 2000, Section 3(1), to consult and report on their proposals for a National Park in the Cairngorms.

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Park in the Cairngorms. This contained the following recommendations regarding the proposed Park boundary and NPA planning powers.

Boundaries: SNH proposed that the park should cover an area of 4580km\(^2\), which includes:

- Cairngorms massif, Rothiemurchus and Glenmore
- Carn Éalasaid and Tomintoul
- Lochnagar/White Mounth, Glen Muick and Upper Deeside
- Mid-Strathspey

Planning Powers: SNH proposed that local authorities should remain as planning authorities under the terms of the Town and Country Planning (Scotland) Act 1997. However, Cairngorms NPA should be made a structure plan authority with joint responsibility for preparing the structure plans covering the Park area. SNH recommended that a joint committee of local authorities and the NPA prepare a single local plan for all or most of the Park area. Alternatively, SNH suggested that the current local plan framework could be maintained, with each local authority reviewing its local plan jointly with the Park Authority. In cases of disagreement over policy, either the Park Authority or the local authorities would have powers of referral to Scottish Ministers.

In carrying out their development control functions, each local authority should consult with the National Park Authority on development proposals that the NPA deems to be of significance to the implementation of the aims of the National Park. In the early days of the National Park, SNH suggested that each local authority should circulate a weekly list of planning cases to the Park Authority. If the local authority intends to approve a proposal contrary to the recommendation of the NPA, then the local authority should be obliged to notify Scottish Ministers, who may choose to call in the application for their decision.

Park Authority: The NPA should have 25 members, 5 of which should be directly elected, 10 appointed by the local authorities and 10 appointed by Ministers.

29 MAY 2002: The Scottish Executive launched its final consultation on the Cairngorms National Park with the publication of “Cairngorms National Park: Consultation on Draft Designation Order” (Scottish Executive 2002), the consultation period ran until 22 August 2002.

The proposals in this consultation draft differ from those in previous documents, as explained below.

Boundaries: The Scottish Ministers have decided that the Park should consist of the main Cairngorms massif and adjacent settlements together with the Grantown-on-Spey area. This is in the region of 50% smaller than the area proposed by SNH, a map comparing the SNH proposals with that proposed by the Scottish Executive in the Draft Designation Order is available online.
The Scottish Executive does not provide any reason as to why they have rejected SNH’s proposals in the text of the draft designation order.

**Planning powers:** The planning powers of the NPA proposed by the Executive differ from those proposed by SNH, as described below:

- Local authorities will retain responsibility for preparing structure plans with the NPA designated as a statutory consultee.
- The NPA will be responsible for preparing a Park wide local plan, or series of plans.
- Development control will remain a local authority function. However, the NPA will have the power to call-in any application which raises a planning issue that is of significance to the aims of the National Park, as defined in the National Parks (Scotland) Act 2000, section 1.

**Park Authority:** The NPA should have 25 members, 5 of which should be directly elected, 10 appointed by the local authorities and 10 appointed by Ministers.


The proposals in the draft SSI differ from those in the consultation draft of the Designation Order as explained below:

**Boundaries:** The boundary of the Park has changed from that proposed in the consultation draft of the Designation Order. The Park will now include the heads of the Angus Glens, Strathdon and Glen Buchat, most of the Glenlivet Estate, the Laggan area, Dalwhinnie, Glen Tromie and the Gaick Forest. The Scottish Executive has produced a map of the proposed boundary.

This boundary excludes approximately 25% of the Park as originally proposed by SNH, including the Forest of Atholl and Bienn A’Ghlo.

**Planning Powers:** The proposed planning powers remain substantially unchanged from those proposed in the consultation draft of the Designation Order, i.e.:

- Local authorities will retain responsibility for preparing structure plans
- The NPA will be responsible for preparing a Park wide local plan(s)
- Development control will remain a local authority function.

The only changes are an increase in the time within which a planning authority must notify the NPA of a planning application from three to five days, and an increase in the time within which the NPA can exercise its call-in powers from two to three weeks.

**Authority:** The proposed make-up of the NPA remains unchanged, i.e. the NPA should have 25 members, 5 of which should be directly elected, 10 appointed by

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Ministers and 10 by local authorities. The breakdown of local authority appointees, by council, is as follows:

- Highland Council: 5
- Aberdeenshire Council: 3
- Moray Council: 1
- Angus Council: 1

The extension of the Park into the Angus Council area, and the granting of one NPA member’s appointment to Angus Council, has resulted in a reduction of nominees to be appointed by Moray Council from two to one.

The only other adjustment to the powers of the NPA, as proposed in the consultation draft of the Designation Order, is the removal of the power of the Authority to appoint and provide Park Rangers, this power will remain with the constituent local authorities.

The five elected members will be elected through a postal ballot on a first past the post basis. The Park area has been split into five electoral divisions for this purpose. Once elected the member has tenure for four years. Full details of the election procedures are set out in the draft Cairngorms National Park Elections (Scotland) Order 2003.
REACTION TO THE PROPOSALS IN THE DRAFT DESIGNATION ORDER

The proposals relating to the Park boundary and NPA planning powers in the SSI have stimulated considerable reaction from interested parties. Proposals relating to the make up of the NPA and financial arrangements have created little comment. The following section examines some of the comments made regarding these proposals.

PLANNING POWERS

The proposed split of planning powers between local authorities and the NPA has been broadly welcomed by the local authorities within which the Park is set, e.g. The Highland Council (2002):

“…has praised the Scottish Executive for taking on board the views of local people in defining the boundaries of the new national park at Cairngorm and maintaining the responsibility that the Council has for determining planning applications within the park boundary.”

However, this is not a view shared by some third parties. The Mountaineering Council of Scotland (2002) considers that:

“This decision is astounding and demonstrates a total lack of awareness of the lessons that have been learned around the world, most notably in England and Wales, that a National Park should be a single planning authority if it is to deliver any meaningful protection and co-ordinated management”.

The Scottish Executive (2002c) has outlined its reasoning for splitting planning powers between the NPA and local authorities as follows:

“The Park Authority will be charged with preparing a local plan, in consultation with local authorities and local communities, to provide a context within which individual planning applications will be determined.

To allow the Authority to concentrate on this work, and on its other core responsibilities such as land management, day to day handling of planning applications will remain with local authorities.”

PARK BOUNDARY

The proposed boundary outlined in the SSI would result in a Park approximately 50% larger than that set out in the consultation draft of the Designation Order, although this is still approximately 25% smaller than that recommended by the SNH Reporter. The proposed boundary has came in for criticism from some organisations, many of which think the boundary does not follow the Cairngorms natural physical edge, e.g. The National Trust (2002):
“…can see no rational justification why the Angus Glens are included but the Perthshire hills are not. The criteria for inclusion are set out in the National Parks (Scotland) Act 2000. These do not include local authority convenience as a justification.”

This is a view echoed by Royal Society for the Protection of Birds (RSPB), their Parliamentary Officer stating (The Herald 2002):

“We are going to get a seriously flawed National Park. How you decide that one side of a mountain is in and the other side is outside I do not know.”

A common theme amongst comments about the Park is that the boundary has been defined for administrative expediency, the Park’s southern boundary follows the northern border of Perth and Kinross Council without ever crossing it and, for example, the Cairngorms Campaign (The Scotsman 2002) considers:

“The boundary has everything to do with Labour’s political expediency and nothing to do with effective National Park designation. The fact they are running the boundary across the tops of two of the finest and most remote mountain summits in anywhere in the UK, with half in and half out, demonstrates how little regard they have for the statutory conditions for designation.”

However, this is not a view shared by the Scottish Executive (2002d), which justifies the proposed boundary as follows:

“…Scottish Ministers had to keep in mind what was (or will be) best for the National Park as a whole. When considering amendments to the area for designation of a National Park the Ministers opted for an inclusive approach. However, it is their view that the addition of further peripheral areas would weaken the Park’s coherent identity and would not be conducive to the effective management of the area.”
APPENDIX 1: THE CAIRNGORMS – WHAT AND WHERE?

Location

The proposed Cairngorms National Park is located in northeast Scotland. The northern boundary of the Park is approximately 30 miles south of Inverness. A map of the area can be found online.

Environment

The proposed Cairngorms National Park area is centred on a high mountain core, much of it above 1000m, which includes an arctic-like plateau and several lochs providing a key refuge for arctic/alpine plants, birds and invertebrates. This is also the source of the rivers Don, Dee and major tributaries of the Spey.

The Park would also include the largest surviving fragments of the Caledon Forest, which flank the mountain massif in the north, west, and south. Dominated by Scots pine, the Forest provides a home for a wealth of wildlife including the Scottish crossbill, capercaillie and red squirrel.

The uncultivated moorland and wetlands surrounding the core area are home to more widespread and common species. Planted forest and agriculture on the lower lands add to the diversity of the environment.
BIBLIOGRAPHY


Reject Cairngorms National Park Order says the National Trust for Scotland, National Trust for Scotland Press Release, 14 November 2002


Scottish Natural Heritage, 1999, National Parks for Scotland: Scottish Natural Heritage’s Advice to Government, Edinburgh, TSO


ABERDEENSHIRE COUNCIL

CAIRNGORMS NATIONAL PARK DESIGNATION, TRANSITIONAL AND CONSEQUENTIAL PROVISIONS (SCOTLAND) ORDER 2003

Aberdeenshire Council’s Committees have considered the above Order and welcome the opportunity to set down its views (with an update to be given orally of the views of the Marr Area Committee arising from its meeting on 3 December, if different) as follows:-

1. The Council will wish to actively support efforts to realise the objectives of the National Park for the Cairngorms.

2. It broadly welcomes the change in area to avoid splitting many Aberdeenshire communities and key environmental designations (which was its criticism of the Draft Designation Order) but see 8 below.

3. It will seek to work to make the sharing of responsibility for Town & Country Planning as seamlessly as possible in a transparent, clear and accountable way.

4. The Council will wish to support the preparation of a National Park Plan and a Park-wide Local Plan. However, it should be noted that Aberdeenshire Council has already published its Finalised Aberdeenshire Local Plan covering all of its area, and expects to place relevant objections before a Public Local Plan Inquiry starting in mid May 2003 and seek its adoption in 2004. Subject to the views of the National Park Authority it is anticipated that this Local Plan will be adopted in its entirety.

5. To enable effective working arrangements on its first day of operation, the Council urges that a special Planning Adviser should be appointed now by the Scottish Executive to undertake the production of a protocol to be adopted by Councils and eventually by the Park Authority as the basis for deciding those planning applications and related matters which are likely to raise a planning issue of general significance to the Cairngorms National Park aims. These are many complex practical, administrative, financial matters to be agreed to be operational by 1 September 2003.

6. That early consideration also be given to the detailed arrangements for carrying out specialist planning functions such as enforcement, hazardous substances, conservation area, listed buildings, archaeology within the Park area.
7. That in view of the requirement to share planning and development powers, the Order should state that these functions should be reviewed after five or seven years time as recommended by the Rural Development Committee.

8. That detailed consideration should be given to extending the boundary of the National Park area to include the whole of the Caernlochan Site of Special Scientific Interest, Special Protection Area and Special Area of Conservation to result in the integrity of environmental designations not being split by the proposed designation area.

9. That provision be reinstated in the Order to enable the appointment of Countryside Rangers to be able to play the important part of any visitor management strategy - delivering one of the key aims of the National Park - to promote understanding and enjoyment, including enjoyment in the form of recreation of the special qualities of the area by the public. The coordination and training of a National Park Ranger Service represents the front line of welcoming and educating visitors and the Park’s role should not be relegated to “enabling”.

10. That provision be made for the Park Authority to take over Council’s financial commitments for EU Objective 2 projects to repair upland footpaths in the period 2004 – 2006.

11. That the start dates for bringing the Park Authority into operation should be reconsidered to enable the Council nominations to the Authority to be drawn from those elected to the Councils on 1 May 2003.

Notwithstanding the above detailed points, Aberdeenshire Council is keen to be associated with the successful establishment of a Cairngorms National Park to meet the objectives set down in the National Parks Act, to continue to be an effective partner with the National Park Authority (as it has been with Cairngorms Partnership) and work to serve local, national and international interests both in the short and long term.

Allan G Garvie
Head of Planning Policy & Environment
THE HIGHLAND COUNCIL

WRITTEN EVIDENCE TO THE TRANSPORT AND THE ENVIRONMENT COMMITTEE - 4 DECEMBER 2002

CAIRNGORMS NATIONAL PARK

- Welcome the Designation Order

The Highland Council welcome the publication of the Designation Order giving final effect to the designation of the Cairngorms National Park.

- Accept Sharing of Planning Powers as Compromise

The final decision that the powers be divided between the National Park and the local authorities is an acceptable compromise. The local authorities were not alone in their views in suggesting the retention of planning powers since they had many local supporters from community councils, businesses and organisations. Equally, other organisations, some at least from outwith the area, felt that this was a National Park and that the Park Authority should have all planning powers.

- Joint Preparation of Local Plan

The Council’s position has been that local plan preparation should reside with the local authorities but with full consultation with the National Park Authority.

Given that Local Plan preparation is to be the responsibility of the National Park Authority the Council would argue for the need for close joint working between the Council and the National Park Authority, in a view put forward in the evidence which I gave to the Rural Affairs Committee at a meeting in Kingussie in October 2002. The Badenoch & Strathspey Local Plan was adopted in September 1997 and will need review in the not too distant future and there are issues for the Council in relation to updating those parts of Badenoch & Strathspey outwith the National Park boundary.

- Joint Exercise of the Development Control Function

The Council’s position has always been that the development control function should reside with the local authorities. In this arrangement the National Park Authority would have been consulted on any application of interest to it and there would have been a referred power to Ministers in the event of disagreement. The arrangements now proposed will require an acceptable protocol to be agreed in respect of the proposed call-in procedure to ensure confidence and understanding of the system by prospective developers.

- Protocol

The Council would wish to invite this Committee to consider the early preparation of a protocol on the delivery of planning powers so that there is clarity and transparency. It would be wise if the four local authorities work with the Scottish Executive to prepare a draft protocol in the four months prior to the establishment of the Park. There would then be a draft document available for the incoming National Park Authority to consider, adjust as appropriate and agree before the Park becomes operational on 1 September 2003.

- Successful Implementation

The Highland Council looks forward to the successful implementation of the ideals which have been debated for almost half a century as to the establishment or not of a Cairngorms National Park. As
Chairman of the strategic Committee responsible for delivery of the planning function I look forward to playing my part in that success.
The National Trust for Scotland

CAIRNGORMS NATIONAL PARK DESIGNATION ORDER

WRITTEN EVIDENCE TO TRANSPORT AND ENVIRONMENT COMMITTEE

1. Background

1.1 The National Trust for Scotland has statutory purposes to promote the conservation and enjoyment of Scotland’s natural and cultural heritage. It is Scotland’s largest voluntary organisation, with 250,000 members. It manages 127 properties, including the 29,000 hectare Mar Lodge Estate, which covers nearly 10% of the proposed area and lies at the heart of the Cairngorms.

1.2 The Trust would like to extend the innovative practices it is developing at Mar Lodge in land management, responsible access and public education to the rest of the CNP, which is the reason for the active role it is playing in the Park’s establishment.

2. Planning Powers of National Park Authority

2.1 The Cairngorms National Park Authority (NPA) should have full planning powers, including responsibility for strategic and local planning and development control.

2.2 The 2002 DEFRA Report on the National Parks of England concluded that success depended on investing full integrated planning and development control in the one body.

2.3 This principle was followed by the Executive in the designation of the Loch Lomond and the Trossachs National Park, and it is incomprehensible to see what is so different in the case of the Cairngorms – other than the attitude of some of the Local Authorities involved.

2.4 Long-term success for the Park will depend on reconciling the increased investment in tourism that Park status will generate with the protection of the landscape and natural heritage for the benefit of the local communities. Splitting production of the Park Plan from its implementation through development control will make such reconciliation highly problematic.

2.5 Although straightforward applications will proceed unhindered, contentious issues are likely to be called in ultimately for the Minister to decide, which is an abrogation of local democracy. The inevitable tensions between the NPA and the Local Authorities will frustrate integrated development to the detriment of the local communities.

2.6 With four, possibly five, Local Authorities involved each with its own strategic approach to planning, there will inevitably be inconsistencies in the way development is managed which will be at odds with the Park Plan. Friction will result when a development proposal enjoys the support of one Local Authority yet is opposed by locally-elected representatives in another part of the Park. The proposals in the Designation Order (DO) do not adequately address this issue.

2.7 The interests of the local communities will be better served through the NPA, which is likely to have a high proportion of local Councillors and local representatives, than by leaving planning control in the hands of the Local Authorities. Why should representatives from Thurso, Elgin, Peterhead or Forfar decide on CNP issues rather than the NPA with its local representation?

2.8 The NPA will focus exclusively on the CNP as a special geographical area of international importance and will be representative of all local people in that area. If the Executive is seriously committed to local democracy then planning control should be devolved to the NPA.

2.9 The NPA needs powers to control major land-use management issues, such as deer control, forestry and agriculture, which are largely outside the normal mandate of the Local Authorities.
The proposed planning regime will also make achieving World Heritage status for the Cairngorms more difficult. The guidelines for selection of World Heritage Sites (WHS) state that all sites must satisfy the requirement for “the existence of protective legislation at the national or municipal level, and/or a well-established contractual or traditional protection, as well as of adequate management and/or planning control mechanisms.” On the basis of European experience, it is probable that the present proposals by the Scottish Executive for the discharge of planning functions would not satisfy these guidelines.

3. Area of National Park

3.1 The Cairngorms National Park should cover the area recommended by the Reporter, Scottish Natural Heritage (SNH) in its 2001 Report, which was the result of an exemplary local consultation exercise. It has wide support both nationally and in the Cairngorms area, as evidenced in the responses to the Draft DO.

3.2 The Trust welcomes the changes made by the Scottish Executive following this consultation to include amongst other areas the heads of the Angus Glens, and areas of Strathdon, Glenlivet and Upper Speyside.

3. The continued exclusion of parts of Highland Perthshire is illogical. The DO states that Ministers have applied the qualifying criteria as set out in the National Parks (Scotland) Act 2000 as the basis for deciding which areas should be included. However, as the attached analysis shows (Annex 1), the application of the criteria is inconsistent in that some of the highest scoring areas have been excluded whereas low scoring areas have been included. The only explanation is that some other hidden criteria have been applied by Ministers, contrary to the requirements of the enabling legislation.

3.4 The management of the high hills at the core of the NP is inextricably linked with the management of the surrounding low ground for the two principal reasons of land management and visitor management. The estates that manage the land generally extend from the low ground to the high summits, so the NPA’s ability to influence the management of the hills requires it to be able to influence the management of the straths and glens. Visitors accessing the high ground start their journeys on lower ground, so the ability to influence visitor behaviour effectively requires an input at lower levels. These important principles have rightly been followed around much of the proposed area, including Deeside, the Angus Glens and Strathspey, but have been ignored along much of the southern boundary, which runs for several miles at over 3,000’ along the Council boundary.

3.5 The principal points of entry to the CNP will be either the A9 up the Vale of Atholl or the A93 up Glen Shee. Both entry points are in Perthshire. It would be sensible to site the “Gateway to the Park” at the point of entering the hills in northern Perthshire, which forms the obvious location for orientation and information provision.

3.6 The omission of the Perthshire hills means that the core of the CNP now lies right up against its southern boundary. The geographical centre of the Park is now to the North East of the core mountain area.

3.7 One consequence is that the lack of an effective “buffer zone” along much of the southern boundary will make achieving World Heritage status for the Cairngorms more difficult. The WHS guidelines state that “boundaries should include sufficient areas adjacent to the area of outstanding universal value in order to protect the site’s heritage values. The Trust considers that the area proposed in the DO will not meet this requirement. The combination of points 2.10 and 3.7 means that World Heritage nomination is most unlikely because of the inadequacies in the proposals put forward by the Executive.
Evaluation of Scottish Natural Heritage [SNH] sub-units against the three qualifying criteria as set out in the National Parks (Scotland) Act 2000

The Act identifies three criteria for qualifying for inclusion with in the Park:

- outstanding national importance of its natural and cultural heritage
- distinctive character and coherent identity
- meet the special needs of the area in a co-ordinated way

These three criteria were evaluated by SNH in its role as Reporter for each of the 29 sub-units in the wider Cairngorms region. Each criteria was scored out of 5 giving a maximum possible of 15.

Scores for those sub-units that were excluded from the Draft Designation Order but were then included or part-included in the final Designation Order as a result of the consultation exercise are shown below. Also listed are the scores of those areas that continued to be excluded in the Designation Order despite the response to the consultation exercise.

Scores of sub-units included or part-included:

<table>
<thead>
<tr>
<th>Sub-unit</th>
<th>Name</th>
<th>Score</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sub-unit 4</td>
<td>Gaick</td>
<td>10</td>
<td>included</td>
</tr>
<tr>
<td>Sub-unit 7</td>
<td>Strath Avon/Glenlivet</td>
<td>9</td>
<td>part-included</td>
</tr>
<tr>
<td>Sub-unit 8</td>
<td>Strathdon</td>
<td>9</td>
<td>included</td>
</tr>
<tr>
<td>Sub-unit 9</td>
<td>Mid-Deeside</td>
<td>12</td>
<td>included</td>
</tr>
<tr>
<td>Sub-unit 11</td>
<td>Glen Esk</td>
<td>10</td>
<td>part-included</td>
</tr>
<tr>
<td>Sub-unit 13</td>
<td>Glen Clova</td>
<td>5</td>
<td>part-included</td>
</tr>
<tr>
<td>Sub-unit 21</td>
<td>Glen Truim Triangle</td>
<td>8</td>
<td>included</td>
</tr>
<tr>
<td>Sub-unit 22</td>
<td>Strathmashie</td>
<td>7</td>
<td>part-included</td>
</tr>
<tr>
<td>Sub-unit 24</td>
<td>Upper Spey Catchment</td>
<td>11</td>
<td>part-included</td>
</tr>
<tr>
<td>Sub-unit 26</td>
<td>Granton-on-Spey</td>
<td>10</td>
<td>part-included</td>
</tr>
<tr>
<td>Sub-unit 27</td>
<td>Dava Moor</td>
<td>8</td>
<td>part-included</td>
</tr>
</tbody>
</table>

Scores of sub-units in Perth & Kinross that continue to be excluded:

| Sub-unit 15| Upper Glenshee              | 11    | excluded        |
| Sub-unit 16| Kirkmichael                 | 9     | excluded        |
| Sub-unit 17| Atholl                      | 11    | excluded        |

High scoring areas in Perth & Kinross that were proposed for inclusion by SNH and also recommended for inclusion by the Rural Development Committee have been excluded. Evidently criteria other than those set out in the Act have been adopted in designating the boundary, despite the Section 6(6) statement that Ministers considered only those criteria present in the Act as the basis for their decision.

National Trust for Scotland
29 November 2002
Introduction

1 The Institute submits this paper as background for the oral evidence session of the Committee on 4 December 2002. The paper is concerned solely with the proposals for the allocation of planning powers within the draft Order.

Splitting Planning Powers

2 In February 2000, the Institute submitted a preliminary Memorandum on the Planning Function to the Committee to express serious concern that the enabling provisions of the National Parks (Scotland) Bill with regard to planning would include options for splitting planning powers between a National Park Authority and its relevant local authorities. In its report to the Rural Development Committee, as the lead committee on the bill, the T and E Committee strongly supported the Institute’s views that planning powers should not be split.

3 The division of planning powers between strategic and local, as was the case with the former region and district councils, is not the issue. A hierarchical split at the strategic level is entirely appropriate to secure the necessary spatial perspectives on planning issues. The concern the Institute has relates to a split of functions at the local level, i.e. with the planning authority of first resort, which prepares local plans, processes planning applications and exercises a wide range of special powers for implementation and control. These powers are necessarily complementary – policy and implementation should be the responsibility of the same body.

National Park Authority as Planning Authority

4 The Institute supports the allocation of all planning powers at the local level to the National Park Authority. Since this arrangement was decided for Loch Lomond and the Trossachs National Park, no convincing argument has emerged to suggest that another major park, astride several local authority boundaries, would be inappropriate as a planning authority.

5 The Institute expressed considerable concern during the early consultation stages for the National Parks Bill that scant regard was had for arrangements in England. The decision in 1992, following the report of the Edwards Committee, to allocate full planning powers to English National Park Authorities strongly underlined the importance of arrangements, which should also apply in Scotland, to ensure: -

- the special purpose of national parks;
- the need to integrate policy and implementation; and
- the importance of a well resourced planning authority to secure a model of sustainable development.

Practical Issues

6 The following issues arise from the current proposals: -
a) On the experience of the former district and regional councils, the use of call-in powers will inevitably lead to political tensions.

b) The National Park Authority will be unable to develop the scale and expertise required for a development control service capable of dealing with applications called in.

c) The nature of developments which may be the subject of call-in will not necessarily be large scale land use change proposals, but may involve small scale developments. Call-in may therefore not be uncommon.

d) The National Park Authority will be unable to implement its local plan policies, including design, through the normal developer negotiations, particularly through pre-application discussions.

e) The local authority will be required to determine planning applications on the basis of the policies of another authority which will make negotiations with applicants, objectors and statutory consultees difficult.

f) It is likely that the local authority, considering its much wider territory, will find it difficult to prioritise resources for planning staff cover and skills in the priority areas of the national park planning policies, particularly for architecture, conservation, landscape design and ecology.

g) The proposed shared responsibility for planning enforcement and the special controls on trees, wasteland and advertisements is unprecedented. These functions involve significant use of statutory procedures which will inevitably give rise to legal difficulties in determining, for any one case, who is the “appropriate authority”.

h) Confining the powers of the National Park Authority in relation to planning to those of Part II, Part IV (part) and Part VII of the Town and Country Planning (Scotland) Act 1997, will deny it access to a range of other provisions normally available to a planning authority to aid the implementation of its local plans. In addition, parties affected by decisions of the NPA as a planning authority will be unable to seek financial redress through purchase notices or blight notices, where appropriate.

Complementary Arrangements

In the event that this Order is confirmed by the parliament, the Institute would strongly recommend the following: -

a) That the operation of the national park be reviewed in the terms of the Order within no less than five years;

b) That the Executive issue immediate guidance on the options for securing an adequate range of planning services to the National Park Authority;

c) That the Executive immediately prepare a Circular on the protocols necessary to operate the call-in procedure;

d) That the Executive issue guidance on National Parks under the new Scottish Planning Policy series as soon as possible;

e) That a review of the powers of the Town and Country Planning (Scotland) Act 1997, not currently available to the National Park Authority, be carried out with a view to an amendment to this Order, if appropriate, at a future date; and

f) That the restriction of the scope of planning powers should not inhibit the appointment of a qualified Director of National Park Planning for the NPA.