Transport and the Environment Committee

Remit and membership

Remit:

To consider and report on matters relating to transport which fall within the responsibility of the Minister for Enterprise, Transport and Lifelong Learning; matters relating to environment and natural heritage which fall within the responsibility of the Minister for Environment and Rural Development; and matters relating to the land use planning system and building standards which fall within the responsibility of the Minister for Social Justice. (As agreed by resolution of the Parliament on 13 June 2002)

Membership:

Bristow Muldoon (Convener)
Bruce Crawford
Robin Harper
Angus MacKay
Maureen Macmillan
Fiona McLeod
Nora Radcliffe (Deputy Convener)
John Scott
Elaine Thomson

Committee Clerking Team:

Callum Thomson
Alastair Macfie
Euan Donald
Roz Wheeler
Transport and the Environment Committee

Report on Cairngorms National Park Orders

The Committee reports to the Rural Development Committee as follows—

INTRODUCTION


2. The Committee is cogniscent of the work already done by the Rural Development Committee prior to the introduction of the two instruments, particularly in respect of the boundary for the National Park. As such, the Committee focussed on the planning powers aspects of the instruments, in particular the proposed split of planning powers between local authorities and the National Park Authority.

3. The Committee took evidence on 4 December from—
   - Robin Pellew, Chief Executive, National Trust for Scotland (NTS)
   - Graham U’ren, Director, Royal Town and Planning Institute in Scotland (RTPIS)
   - Allan Garvie, Head of Planning Policy & Environment, Aberdeenshire Council
   - Councillor Sandy Park, Chairman, Planning, Development, Europe and Tourism Committee, Highland Council

EVIDENCE

4. The evidence from Highland Council was broadly in support of the proposal for planning arrangements. However, the other witnesses were sceptical, to varying degrees, as to whether the arrangements are workable.

5. The underlying reason for these witnesses not being content the proposals is that the arrangements for the Cairngorms National Park is the proposed split in responsibility for local plan preparation and development control between the National Park Authority and constituent local authorities. These proposals are markedly different to those in place for Loch Lomond and the Trossachs National Park. In that case, there is integrated planning and development control in the one body – the National Park Authority (NPA). This means that that National Park is responsible for preparing local plans, processing planning applications and exercising a wide range of special powers for implementation.
and control. In the case of the Cairngorms National Park, the responsibility for preparing a local plan would lie with the NPA, while development control would remain a local authority function. It was the view of both the RTPIS and NTS that there was no convincing argument for planning powers to be split between local authorities and the National Park Authority. Indeed, NTS cited a conclusion in the DEFRA Report on the National Parks of England that the success of national parks depended on investing full integrated planning and development control in one body.

6. The Committee heard concerns that the split of powers between the proposed National Park Authority and the local authorities will potentially lead to a lack of clarity and transparency in planning arrangements. Highland Council argued that a detailed protocol between local authorities and the NPA should be able to deal with the practical, administrative and financial matters that need to be resolved for planning powers to be effectively exercised from the date of establishment of the National Park. However, NTS was not convinced, arguing that there would inevitably be tensions between the bodies which could frustrate integrated development to the detriment of local communities.

7. A number of criticisms were made about the lack of clarity over how the following aspects would be dealt with in the proposed arrangement—

- the call-in mechanism: there was general agreement on the need for a clear protocol outlining when the NPA would use its call-in powers. NTS expressed a view that this must include small developments, which would have incremental effects on the nature of the Park, in addition to larger developments. Concerns were also raised about how appeals against the use of the call-in power would operate.

- the appeal mechanism: concerns were raised that the split in responsibility for plan making and development control could complicate the operation of the appeals process and may even lead to an increase in judicial reviews of decisions taken by Scottish Ministers.

- zoning: NTS confirmed that the exclusion of the north Perthshire hills from the Park could compromise the effectiveness of the National Park local plan in ensuring appropriate development across the Cairngorms area

- planning powers exercisable by the NPA: RTPIS raised concerns that the planning powers exercisable by the NPA were not sufficient for it to fulfil its responsibilities, e.g. the NPA would be unable to exercise powers granted to planning authorities under Chapter II of the Town and Country Planning (Scotland) Act 1997, even if an area were blighted by their local plan proposals

8. Another issue that was raised, which is linked to the boundary for the park, was buffer zones around the Cairngorms massif. The exclusion of the north Perthshire hills from the National Park could lead to increased development pressure in that area, where planning permission may be more easily obtained than within the Park. This despite the fact that north Perthshire constitutes part of the Cairngorms natural geographic area.
9. Additionally, evidence from NTS was that this arrangement combined with the split of planning powers could militate against UNESCO designating the Cairngorms as a World Heritage Site.

**RECOMMENDATION**

10. The Committee recognises that it is the role of the lead committee to take an overview on the instruments in its consideration as to whether or not to recommend to the Parliament that the instruments be passed. There are clearly a number of factors, not the least of which is the proposed boundary of the Park, which will determine how that Committee comes to a decision.

11. The Committee wishes to express concern about the proposed planning power arrangements for the Cairngorms National Park. On the basis of the evidence, the Committee is not convinced that these arrangements are sufficiently clear, transparent or grounded in local accountability. Furthermore, the Committee is concerned that the split of planning powers is inherently weak, meaning that there is a danger of inconsistent management of development across the National Park area resulting from development control being exercised by individual local authorities.

12. The Committee recommends to the lead Committee that it put these concerns to the Minister and reflects on the answers he gives before deciding whether it wishes to recommend to the Parliament that the instruments be approved.
ANNEX A: EXTRACTS FROM THE MINUTES

TRANSPORT AND THE ENVIRONMENT COMMITTEE

MINUTES

34th Meeting, 2002 (Session 1)

Wednesday 4 December 2002

Present:

Bruce Crawford
Robin Harper
Maureen Macmillan
Bristow Muldoon (Convener)
John Scott

Helen Eadie (Committee Substitute)
Angus MacKay
Fiona McLeod
Nora Radcliffe (Deputy Convener)

Apologies were received from Elaine Thomson.

The meeting opened at 9.23 am.

Cairngorms National Park (Draft Orders) (in private): The Committee considered possible lines of questioning for witnesses.

Cairngorms National Park (Draft Orders): The Committee took evidence from—

Alan Garvie, Head of Planning, Policy and Environment, Aberdeenshire Council

Councillor Sandy Park, Chairman, Planning, Development, Europe and Tourism Committee, Highland Council

Robin Pellew, Chief Executive, National Trust for Scotland

Graham U’ren, Director, Royal Town Planning Institute in Scotland

Cairngorms National Park (Draft Orders) (in private): The Committee considered a draft response to the Rural Development Committee on the orders and agreed that the response should be agreed to by correspondence.

The meeting closed at 1.38 pm.
ANNEX B: WRITTEN EVIDENCE

4 December (34TH Meeting. Session 1 (2002)) – Written Evidence

SUBMISSION FROM ABERDEENSHIRE COUNCIL

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.

Not withstanding 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.

SUBMISSION FROM THE HIGHLAND COUNCIL

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.

SUBMISSION FROM THE NATIONAL TRUST SCOTLAND

Background

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.

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.

*Planning Powers of National Park Authority*

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

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.

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.

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.

Although straight-forward 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.

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.

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?

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.

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.

*Area of National Park*

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.

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.

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.

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.

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.
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.

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.

**ANNEX 1: Boundary of Proposed Cairngorms National Park**

_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>Area</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>09</td>
<td>part-included</td>
</tr>
<tr>
<td>Sub-unit 8</td>
<td>Strathdon</td>
<td>09</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>12</td>
<td>part-included</td>
</tr>
<tr>
<td>Sub-unit 21</td>
<td>Glen Truim Triangle</td>
<td>08</td>
<td>included</td>
</tr>
<tr>
<td>Sub-unit 22</td>
<td>Strathmashie</td>
<td>07</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>08</td>
<td>part-included</td>
</tr>
</tbody>
</table>
Scores of sub-units in Perth & Kinross that continue to be excluded:

<table>
<thead>
<tr>
<th>Sub-unit</th>
<th>Sub-name</th>
<th>Score</th>
<th>Excluded</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sub-unit 15</td>
<td>Upper Glenshee</td>
<td>11</td>
<td>excluded</td>
</tr>
<tr>
<td>Sub-unit 16</td>
<td>Kirkmichael</td>
<td>09</td>
<td>excluded</td>
</tr>
<tr>
<td>Sub-unit 17</td>
<td>Atholl</td>
<td>11</td>
<td>excluded</td>
</tr>
</tbody>
</table>

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.

SUBMISSION FROM THE ROYAL TOWN PLANNING INSTITUTE

Introduction

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

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.

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

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.
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**

The following issues arise from the current proposals: -

- On the experience of the former district and regional councils, the use of call-in powers will inevitably lead to political tensions.
- 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.
- 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.
- 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.
- 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.
- 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.
- 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”.
- 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:

- That the operation of the national park be reviewed in the terms of the Order within no less than five years;
- That the Executive issue immediate guidance on the options for securing an adequate range of planning services to the National Park Authority;
- That the Executive immediately prepare a Circular on the protocols necessary to operate the call-in procedure;
- That the Executive issue guidance on National Parks under the new Scottish Planning Policy series as soon as possible;
- 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; an
- 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.