



THE MOUNTAINEERING COUNCIL OF SCOTLAND

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SPP Consultation
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Dear Ms Richardson

Please accept these comments from the Mountaineering Council of Scotland (MCofS) on the condensed version of the SPP. We are recognised by the Scottish Government as the Representative Body for hill walkers, climbers and ski tourers. We have 10,000 members and aim to represent the interests of all the 400,000 regular Scottish mountaineers on issues relevant to access to, and conservation of, Scotland's mountaineering environment.

I have restricted comments to issues that are a priority for those we represent; primarily the contents of the current SPPs 6, 11, 15 and the NPPG 14 (updated in a draft SPP14). I have addressed these in the order which they appear in the condensed draft SPP.

Rural Development (SPP15)

Paragraph 70 of SPP15 (Rural Development) refers to "sustainable economic growth" (SEG). The 1999 version of NPPG15 in paragraph 1 referred to "sustainable development" (SD). In the 2005 version SPP15 paragraph 1 referred to "sustainable rural development." The emphasis has therefore shifted in the draft SPP from the central premise of the planning system being to sustain the quality of the environment while permitting appropriate development to economic growth being sustained. SPP15 in paragraph 8 states, "wider economic and social objectives should also be considered as should Scotland's distinctive environment and heritage." This also shows the SPP15 promoted a more balanced approach to rural development than the current draft, and is reinforced in paragraph 13, 14 and 26 of that document. The latter specifically emphasising that even outwith natural heritage designated sites, the aim of economic growth should be tempered by the fact that, "one of rural Scotland's special features is the extent to which environmental quality is high outwith protected areas as well as within them. Some parts of these valued environments can accommodate certain types of development, where it can be demonstrated that there will be no adverse environmental impact." Paragraph 27 of SPP15 also emphasises this in terms of the development plans, "development plans must recognise potential but they must also address constraints." Environmental protection actually promotes economic growth particularly in more economically fragile rural areas, such as the Highlands. The businesses that rely on servicing the outdoor-oriented visitors and activities are vital to the Scottish Government's central purpose of economic growth. There should also be recognition that some forms of growth such as industrial development may limit other forms of growth such as tourism through the impact on the natural heritage, including landscape. To some extent, this was recognised in the previous SPPs, but is lacking in the current draft. The promotion of economic growth does not require alteration of the term used in the SPP, but a change in term from SD to SEG does change the meaning of the SPP. Although SEG may reflect the present Governments policies, it is not a direct summary of the previous SPP, and hence represents a change. As there were repeated reassurances that the meaning of the SPP was not to change (apart from a few highlighted instances and this not being one of them), then SEG should be

returned to the previous term SD to achieve this. Also due to the current confusion in terms, the references given in SPP15 should be retained, or placed in the SD section.

Landscape and Natural Heritage (NPPG14)

It is important to retain the statement in NPPG14 paragraph 10, “land rehabilitation, landscaping and the creation of new or improved habitats ... can never offer adequate compensation for the loss of habitats which have developed by natural processes over many hundreds of years.” There is no reference to the relative value of rehabilitated or created habitats in the drafted SPP at all. As many development decisions often depend upon mitigation measures such as these and primarily planners are not ecologists, balancing their value is an important but difficult calculation. Without retention of this explanation, there would be a loss of guidance on this issue, and therefore loss of meaning of the SPP suite through this condensing exercise.

Paragraph 104 of the draft SPP confuses local designations with “wild land.” There is currently no designation for “wild land,” or one that specifies this as a feature for selection. Additionally NPPG14 makes it clear in paragraph 11 that wild land is not just of local importance but is of much higher significance as some areas are recognised as, “mountain and coastal landscapes which are valued nationally and internationally for their quality, extensiveness and wild land character.” As there is no designation for wildness, it is absolutely vital that the SPP with respect to this issue is not watered down, and this should be reflected by repeating the statement of the high importance of wildness in Scotland along the lines of the current NPPG14. All reference to wild land (e.g. 104 & 105) should be moved out of the “local designations” section of the SPP and placed in a separate section, so not downgrading its importance. Additionally, there is no equivalent statement in the drafted SPP to paragraph 16 which states that, “the most sensitive landscapes may have little or no capacity to accept new development. Some of Scotland's remoter mountain and coastal areas possess an elemental quality from which many people derive psychological and spiritual benefits.” Restricting reference to that in the new paragraph 105 effectively loses the concept of limit to capacity due to the areas sensitivity which goes beyond considering the level of sensitivity. The concept of a limit needs to be retained to preserve the meaning of the previous SPP suite. Also the inclusion of “soft” benefits based on perception of the landscape should be retained as gathering research by SNH has shown this to be highly important to residents of Scotland. It would therefore be inappropriate at this stage to remove this as a consideration as contextual, or expendable as it forms the basis of an emerging method of defining wildness.

There is also a loss in the draft of the concept of developments outwith a valued area (not specified as designated, and therefore including areas of wild character) having an effect on it. Paragraph 16 of NPPG14 states that, “planning authorities should take great care to safeguard their wild land character. This care should extend to the assessment of proposals for development outwith these areas which might adversely affect their wild land character.” Removal of this, would lead to a general weakening of landscape protection. Associated with this, another important inclusion that has been omitted from the drafted SPP is the glossary. Inclusion of this definition is especially important for a concept whose interpretation varies so widely as “wild land.” The current glossary defines as follows: “Wild Land: uninhabited and often relatively inaccessible countryside where the influence of human activity on the character and quality of the environment has been minimal.” This definition was extensively discussed and honed and must be re-inserted else there will be no one understanding of the terms meaning.

The reminder to planners of the legislation affecting wildlife and habitats would benefit from retention as in NPPG14 paragraph 17 where there is reference to the Wildlife and Countryside Act 1981, European Community Habitats and Birds Directives and Protection of Badgers Act 1992. There would be benefit in the addition of the newest relevant Act added to the legislature since the last planning policy revision; Nature Conservation (Scotland) Act 2004.

The draft SPP would benefit from reference to Local Biodiversity Action Plans (LBAP). They are referred to in paragraph 18 of NPPG14. All authorities now have BAPs. Reference to these in the NPPG has been of value to planners by providing guidance on the species and habitats that are locally important, but not necessarily specifically otherwise protected. It may be appropriate to place this in the local designations section for clarity about the levels of protection afforded.

Paragraph 25 of NPPG14 states that, “development which would affect a designated area of national importance should only be permitted where:

- the objectives of designation and the overall integrity of the area will not be compromised; or
- any significant adverse effects on the qualities for which the area has been designated are clearly outweighed by social or economic benefits of national importance.”

There appears to be no statement to this effect in the draft SPP, and means there is no specification in the SPP under which development may occur on nationally designated sites. This guidance must be retained, most appropriately under the “national designations” section.

The draft SPP omits the important guidance on NSAs beyond the basics in 101. NPPG 14 paragraph 26 states that, “SNH requires to be consulted on certain categories of development within NSAs and permitted development rights are more limited than elsewhere. The stricter development control regime which applies in NSAs is described in SDD Circulars 20/1980 and 9/1987. Planning authorities should take particular care to ensure that new development in or adjacent to a NSA does not detract from the quality or character of the landscape. They should also ensure that the scale, siting and design of such development are appropriate and that the design and landscaping are of a high standard. The views of the Royal Fine Art Commission for Scotland should be sought on proposals for potentially prominent developments within NSAs.” The meaning of the whole of this paragraph has been lost in the new SPP, in addition to the outstanding issue of the status of Circulars and PANs that has not been satisfactorily addressed. The highly important guidance on NSAs with respect to developments outwith the boundaries and stricter permitted development rights especially must be retained to ensure that meaning of the SPP suite is unchanged.

The guidance on potential impacts of developments outwith SSSIs on the designated site has also been lost through omission, and hence changes the meaning of the SPP suite. The meaning of NPPG14 paragraph 29 must be retained.

The omission of the outline purpose of NNRs also loses meaning across the SPP suite as paragraph 101 gives too vague an indication of the national designations and omits, for example, the important primary aim of NNRs as stated in NPPG14 paragraph 32 as, “exemplars for positive land management where conservation and enhancement of the natural heritage is the prime aim.” It may be clearer to place outline aims of the designations in a glossary, as with some of the SPP suite.

In this context it may be clearer to draw attention to the fact that among the aims of National Parks (NPs) that, if they are in conflict, it is the natural heritage that is given primary weight.

A glossary would also benefit from outlining the purpose of international designations as the NPPG14 paragraph 37 does regarding SACs that their purpose is, “ensuring that rare, endangered or vulnerable habitats and species of Community interest are either maintained at or restored to a favourable conservation status.” As above regarding national designations, this may be best placed in a glossary of designations.

The further guidance referred to in NPPG14 paragraph 40 is useful (SOEnD Circular 6/1995) with respect to developments affecting Natura 2000 sites. As noted on a number of points above, as the future status of Circulars and PANs has not been addressed, this valuable guidance may or may not be lost. It may be appropriate to place the further guidance as an appendix in the SPP, or retain reference to the Circular if their status and content is to continue. The status of developments outwith Natura sites is a common point of confusion, and the explanation must be retained.

The NPPG14 states in paragraph 47 that, “planning authorities should seek to safeguard and enhance the wider natural heritage beyond the confines of nationally designated areas. The effect of a development proposal on the natural heritage can be a material consideration whether or not a designated area is likely to be affected, though the level of protection afforded to natural heritage interests outwith designated areas will not normally be as high as that afforded to sites of national or international importance.” This guidance effectively agrees with the restructuring of the SPP into a hierarchy of designations; international, national and local. However, the current SPP draft omits reference to the non-designated areas also having some level of protection as in the above quote. This must be included to confirm that the non-designated areas merit some level of protection, and cannot be written off purely on the basis they do not have a designation.

The reference to Article 10 of the Habitats Directive has been erased from the new draft, although was referred to in paragraph 48 of NPPG14. It is particularly important to retain this reference as without it, there is an assumption that the boundary of a landscape or natural heritage designated site is an area outside of which the impact on the designated site is irrelevant. This is not true under the Directive, but is a poorly understood concept, hence this reference needs to be retained as a clarification of the distinction between impact of developments on non-designated land through Article 10 and a buffer zone, the latter being explicitly excluded from the criteria / constraints, but is distinct from the former.

The draft SPP in paragraph 94 states that, “planning authorities should seek to prevent further fragmentation or isolation of habitats and identify opportunities to restore links which have been broken.” This is a reasonable paraphrase of Article 10 of the Habitats Directive, but specific reference to the source of this policy would be of benefit in portraying the importance placed on this part of the guidance. This cross-referencing was the case in paragraph 48 of NPPG14, and should be retained.

The SPP draft does not refer to Areas of Great Landscape Value (AGLV) or local landscape designations. This would be most appropriate in the suggested glossary of terms, although if the intention is to retain the status of Circulars, then a repeat of the reference to SDD Circular 2/1962 boxed at paragraph 60 of NPPG14 may be sufficient, although the, “framing of policies for the control of development within them,” would likely be more appropriate in the SPP.

Open Space and Physical Activity (SPP11)

The reference to Land Reform (Scotland) Act 2003 (LRSA) was invaluable in the SPP11 in paragraph 11. This cross-referencing in the new SPP is lacking. The general statement in 112 is insufficient and weaker than the LRSA legislation and previous SPP. It is also an area where planners generally lack an understanding, so a clear statement in the new SPP would be of great benefit. SPP11 paragraph 22 stated that, “access rights and core paths plans are material considerations in determining applications for planning permission. Access authorities have a duty to uphold access rights over most land and inland water, not just on paths. Planning authorities should consider attaching appropriate conditions to ensure continuing public access. New development should incorporate new and enhanced access opportunities where appropriate.” This is far too weakly expressed in the new 112 that states that, “planning authorities should consider access rights.” The retention of the reminder that off-path access is equally a material consideration in the planning system is vital. Core paths are only a very small part of the resources open to access rights under LRSA and hence the SPP needs to emphasise the importance of considering equally access rights away from paths. Planning authorities have repeatedly failed to implement access consideration when stipulating conditions for planning consent, and this illustrates the need to retain, indeed further emphasise the access rights in relation to planning. Additionally, this is emphasised through SPP11 paragraph 66 where it is clearly stated that the complete range of, “resources such as rivers, lochs, hills, crags and paths support activities,” should be “fully considered.” This listing is not just of contextual interest but is vital for planning authority interpretation of the consideration of access rights as many planning authorities are still unclear about the significance of the LRSA off-path rights in terms of planning. The drafted paragraph 111 is insufficient to achieve the intended outcome of this emphasis in the previous SPP11, especially since section 112 specifies the need to, “protect core and other paths such as long distance routes and rights of way,” which are of no higher significance in the LRSA in terms of access importance but are only a defined subset of the area within which access rights apply, and are important for consideration in planning. The SPP should read that access is a material consideration that planning authorities should give weight to in their decision making, and applies equally on and off paths.

The statement in paragraph 66 of SPP11 that, “sport and recreation interests should be fully considered and planning authorities should consult with sport and recreation interests,” including “governing bodies of sport,” is important, and is missing from the drafted SPP. On regular occasions the planning authorities have accepted the statements within Environmental Statements, and only come to realise the true level of importance of the development site for recreation when the governing body have learned of the development and responded. This recommendation should be retained in the condensed SPP.

Paragraph 67 in SPP11 states that, “Many outdoor sports and recreation activities depend on the quality of the environment and the planning system has a key role in safeguarding the settings where these activities take place.” This is partially covered in the new 111, but misses the point that it is a role of the planning system to protect the environmental context of physical activity. Currently 111 reads, “support, protect and enhance open space and opportunities for sport and recreation.” This is an alteration in meaning from the previous SPP through specifying “open space” where this consideration is relevant. “Open space” is defined in the SPP as areas that are, “within and on the edges of settlements.” This restriction to “open space” as opposed to all contexts within which physical activity is enjoyed is not what is in the SPP11, and is overly restrictive in application. The new 111 needs to reflect the role of the planning system in protecting the context across all environments where the quality of the environment has a role in the enjoyment and contributes to physical and mental health of activity in a high quality environment. This must include rural areas as is meant by the previous SPP11 paragraph 67.

Renewable Energy (SPP 6)

The SPP6 in paragraph 8 states that the aim is that, “progress towards the 2020 target continues to be made in a way that affords appropriate protection to the natural and historic environment without unreasonably restricting the potential for renewable energy development.” This explicitly places the emphasis on renewable developments around the constraint of protecting the environment. This is not just contextual information that can be removed from the condensed SPP without loss of guidance, but an important underlying principle that the planning system cannot sacrifice habitat for the purpose of fighting climate change when gradual attrition of the environment has been one of the causes of climate change.

Paragraph 9 in SPP6 states, “National Planning Policy Guideline 14: Natural Heritage sets out the policies that must be taken into account when considering the impact of development on the natural heritage.” This explicit cross reference is vital. The natural heritage (biodiversity and landscape) is often the primary issue in wind farm applications, especially the wild land statement. In the draft SPP between paragraph 141 and 146 there is no mention of wild land as a criteria, despite being an important criteria for all developments. The draft SPP paragraph 105 states that planning authorities should safeguard the character of wild land in the development plan. It may take all authorities across Scotland some time to implement this (and draft SPP does not provide guidance how much weight would be placed on it so are likely to be of varying quality), and without explicit reference with respect to renewable developments there will be a temporal gap in any policy guidance on this matter, and likely variable emphasis when all development plans are realised. The cross reference to the relevant section should be retained and wild land should be included in the list of criteria at paragraph 141 and bullet 1 in paragraph 143. This would greatly help to reduce the piecemeal use of the current SPPs; one of the stated aims of this rationalisation exercise.

Paragraph 10 in SPP6 states that, “the Nature Conservation (Scotland) Act 2004 (NCSA) places a statutory duty on all public bodies to further biodiversity while exercising any of their functions. Planning plays a key role in fulfilling this duty and in ensuring that the natural environment remains a key contributor to the sustainability of human activity and to the quality of life.” There is no reference to the NCSA in the drafted SPP, neither in the renewables section nor anywhere else in the draft SPP. This is an important piece of legislation with respect to planning function, although is sometimes overlooked in planning decisions and development plans. It is important that a reference is retained, and is cross-referenced from the renewables section.

The draft SPP states in paragraph 139 that a development plan only, “takes account of relevant economic, social and environmental and transport issues.” In contrast, paragraph 17 in SPP6 emphasises, “maximising environmental, economic and social benefits.” This is a change in meaning, and the stronger statement in the SPP6 should be retained for continuity of meaning that planning authorities should be seeking these benefits rather than merely taking them into account.

Paragraph 19 in SPP6 states that, “any benefit, including mechanisms for negotiating with communities, is offered entirely at the discretion of the developer. Benefits that cannot be considered material in planning terms should not be taken into account when assessing whether a specific proposal is acceptable.” Paragraph 140 of the draft states that they can be material considerations if they meet the tests in Circular 12/1996. At

the stakeholder meeting it seemed unsure what was the future status, content or indeed existence of PANs and Circulars, hence it would be insecure to premise a factor in granting a planning permission on their contents. It is, however, important to retain the reminder that sweeteners for the local community are not material in planning decisions, as there have been attempts to use this in some cases.

Paragraph 44 in SPP6 states that, “likely environmental effects of any new grid infrastructure required to accommodate renewable energy developments should be taken into account as far as possible as part of the SEA process, so that appropriate spatial or criteria based policies can be developed to take account of the overall effects of implementing the plan.” There appears to be no reference to grid infrastructure in the draft SPP, nor is there anything in the draft SPP that covers the important point in paragraph 53 of SPP6 that reads, “available capacity on the grid to accommodate a project should be a material planning consideration.” These references to grid infrastructure are vital due to the interdependence of such grid infrastructure and some developments. Retention of this guideline would better reflect this recognition that exists in SPP6.

The lack of clarity about the future status or content of PANs and Circulars causes problems wherever the meaning of the SPP depends upon them. This is the case with respect to paragraph 57 of SPP6; the meaning of which depends upon SODD Circular 4/1998 and SODD Circular 12/1996. These contain important guidance and even with the current Circulars, planning authorities exhibit some confusion about the use of conditions and agreements as part of granting planning permission. The guidance should be integrated into the draft SPP or the continuation of Circulars should be secured as they stand, and reference inserted to these Circulars about conditions and agreements.

The majority of planning authorities are yet to produce their spatial framework for wind farms, hence removal of the contents of Annex A in the current SPP6 would be disadvantageous at this stage. This specific guidance is essential as it is not contained within the body of the draft SPP. This may be appropriate for guidance in a separate document. If this is not to occur, then the Annex A should be reproduced approximately as it is currently. Whether this is to be integrated into the SPP or in a separate document, it must be available for consultation at the same time as the SPP to ensure that what is lacking in one is in the other document.

The bullet points in 144 primarily duplicate those in 141. ‘Constraints’ are an extension of ‘criteria,’ hence it is not necessary to repeat the listings, but just to ensure that the list is stated as relevant to both planning decisions and development plans. If it is considered that these are distinct, then that distinction needs clarified in the SPP, as it is not clear. The interaction of these terms is illustrated in paragraph 5 of Annex A of SPP6, “identify those areas where there are no significant constraints on development. This should be reflected in the criteria set out in development plans”. It is also unclear where this separate list of constraints were transferred from, as they do not appear to be listed in the SPP6. This confusion needs to be clarified and the recommendation would be a single list, and an explanation of where the factors are criteria and / or constraints, if necessary.

Please do not hesitate to contact me to discuss these issues further.

Yours sincerely

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Access & Conservation Officer