



## Report to the Scottish Ministers

# TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

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Report by [REDACTED], a reporter appointed by the Scottish Ministers

- Case reference: NA-CNP-002
- Site Address: New Farm, Land East of Lynovoan, Lynchat, Kingussie, PH21 1LG
- Application by Balavil Estate Limited
- Application for planning permission (in principle)], ref. 2018/0354/PPP dated 24 September 2018 called-in by notice dated 13 December 2018
- The development proposed: relocation of Balavil home farm (due to the dualling of the A9) and construction of new farm buildings, farmyard, associated utilities/drainage, landscape and access road to new farm
- Date of accompanied site visit: 24 April 2019

Date of this report and recommendation: Grant Planning Permission in Principle subject to conditions 18 June 2019

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Planning permission in principle for relocation of Balavil home farm (due to the dualling of the A9) and construction of new farm buildings, farmyard, associated utilities/drainage, landscape and access road to new farm at New Farm, Land East of Lynovoan, Lynchat, Kingussie, PH21 1LG.

• Case reference	NA-CNP-002
• Case type	Planning Permission in Principle
• Reporter	[REDACTED]
• Applicant	Balavil Estate Limited
• Planning authority	Cairngorms National Park Authority
• Other parties	Transport Scotland
• Date of application	24 September 2018
• Date case received by DPEA	13 December 2018
• Method of consideration and date	Written submissions and accompanied site inspection on 24 April 2019.
• Date of report	18 June 2019
• Reporter's recommendation	Grant planning permission in principle subject to conditions.

### Applicant's Case

The only matter in dispute is the objection of Transport Scotland with regard to the impact of the farm re-location proposals on the A9 Dualling Project between Crubenmore and Kincaig.

However, the land required can be avoided and this can be secured by planning condition. This is an application for planning permission in principle and a condition subject to the prior approval of the planning authority in consultation with Transport Scotland could restrict any development that did not align with the A9 project.

### Cairngorms National Park Authority's case

The recommendation to approve the application for planning permission in principle was conditioned on further details to demonstrate alignment with the A9 dualling proposals as well as approval in consultation with Transport Scotland. This approach safeguards the delivery of the A9 Dualling Scheme.

### Transport Scotland

The planning application impacts on the following elements of the proposed A9 Dualling Scheme:

- Delivery of the northbound carriageway
- An access track to Lynvoan Cottage, which also forms part of a new shared Non-Motorised User facility
- The diversion of an unnamed watercourse lying to the south of Lynvoan Cottage and passing under the existing A9 at this location
- Environmental mitigation including native woodland planting, mammal fencing and noise mitigation.

The A9 project is of national importance as referenced in the National Planning Framework. The details are now significantly advanced and any development that would prejudice its delivery should be avoided.

### Reporter's Conclusions

The proposal is in accordance with the development plan. Ministers commitment to the completion of the A9 dualling is as expressed through the National Planning Framework and other national policy documents. This roads scheme has now advanced to draft orders stage and through preparation of an environmental assessment. Consequently, I consider that any approval of this current planning application should be conditional on a clear demonstration that prejudice to the delivery of this roads scheme can be avoided.

The application is for planning permission in principle and I consider there is scope for revision of the layout and siting of buildings and ancillary works. In any event the suspensive nature of the proposed conditions would prevent development proceeding until these matters have been resolved and approved in writing by the planning authority in consultation with Transport Scotland. The wording of the proposed condition, when read with the attached plan, identifies those areas that should be retained free of development. With this provision I consider that the land necessary for the delivery of the nationally important A9 Dualling Scheme and its associated environmental mitigation would be safeguarded.

### **Recommendation**

I recommend that planning permission in principle is granted subject to the two conditions as listed in Appendix 1.

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DPEA case reference: NA-CNP-002

The Scottish Ministers  
Edinburgh

Ministers

This application is for construction of new farm buildings, farmyard, associated utilities/drainage, landscape and access road on land east of Lynovoan, Lynchat, by Kingussie. It was notified to Scottish Ministers as there was an objection from Transport Scotland and as the Cairngorm National Park Authority intended to grant planning permission in principle. The application was called in by Scottish Ministers on the 13 December 2018 given its possible implications for the nationally important dualling scheme on the A9.

In preparing this report I sought further written submissions on the matters summarised below whilst reserving the possibility of a hearing process.

Given the requirements of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 (“the EIA regulations”) I requested further information to determine whether formal screening was required and to obtain the information necessary to enable that process. Given the sites location within the Cairngorms National Park, which is defined in the regulations as a “sensitive area”, I issued [a Screening Direction](#) on behalf of Scottish Ministers dated 9 April 2019. This concluded that in this case the proposal does not constitute Environmental Impact Assessment development.

At the same time I sought further clarification of the concerns raised by Transport Scotland regarding any implications for the proposed works to the A9. This sought supporting evidence (including mapping) to clarify the extent of any overlap between the two proposals. It also sought to clarify whether or not the matters in dispute could be addressed through planning conditions and at the detailed planning stage (given this is an application for planning permission in principle).

In a further procedure notice dated 2 April 2019 I confirmed that subject to some minor clarification as to the final position of parties and on the suggested wording for conditions a hearing was not required. The written exchanges then concluded on 18 April 2019 and an accompanied site visit, which was attended by the Cairngorms National Park Authority, the applicant and Transport Scotland, was held on 24 April 2019.

My report takes account of all the relevant submissions together with my observations on site.

## CHAPTER 1: BACKGROUND

### Site location and description

1.1 The [application site](#) is on the opposite (north) side of the A9 from the small village of Lynchat where the existing farm buildings are currently located. The site is on a gently sloping terrace above the A9 and has an established woodland on a knoll to the north-east, relatively recent woodland planting to the north, surrounding farmland and an estate cottage at Lynoavan to the west. The land is owned by Balavil Estate Limited.

### Consultation Responses

1.2 Scottish Water: has no objection to the proposed development.

1.3 Highland Council Flood Risk Management Team: has no objection to the proposed development but requests that a condition is added to ensure the final drainage plan, including percolation tests at the location of any infiltration features, and design calculations provided for 30 year and 200 year return periods plus climate change storm events, is submitted for approval prior to development.

1.4 Highland Council Transport Planning Team: has no objection in principle to the proposed development, as any impact on Council roads will be a temporary one from construction traffic.

1.5 Cairngorms National Park Authority (CNPA) Ecology officer: is satisfied that the supporting information and preliminary ecological appraisal provides sound information for decision making and identified a range of measures to be incorporated in conditions.

1.6 CNPA Landscape officer: notes that the local landscape and visual impacts as well as adverse impacts on special landscape qualities of the proposed development can be reduced to an insignificant level through sensitive siting, high quality design, mitigation planning and ongoing management. They note that the need for critical mitigation planning between the site and the A9 may constrain the development.

1.7 CNPA Outdoor Access officer: notes that although a core path (LBS146) runs south and west from the edge of the proposed development site towards Raitts souterrain and Raitts settlement, this is outside the development site and would only be affected by construction traffic (using the current A9 underpass or potentially a new underpass in future). A condition can be used to ensure safe public access is maintained on the core path.

1.8 Transport Scotland: object to the application because it overlaps some areas of land they have identified for compulsory purchase and consider that it impacts on:

- a) Delivery of the northbound carriageway;
- b) An access track to Lynvoan Cottage, which also forms part of a new shared Non-Motorised User facility;
- c) The diversion of an unnamed watercourse lying to the south of Lynvoan Cottage and passing under the existing A9 at this location;
- d) Environmental mitigation including native woodland planting, mammal fencing and noise mitigation.

## Representations

1.9 No representations have been received on the application.

## Council's intended decision prior to call-in

1.10 At its [planning committee of 9 November 2018](#) the Cairngorms National Park Authority resolved to grant planning permission in principle subject to conditions and notification to Scottish Ministers. This decision followed the recommendation in the officer's report of handling that:

The proposed development is considered to comply fully with the policies of the Cairngorms National Park Local Development Plan 2015 with appropriate conditions attached. It is not clear from Transport Scotland's objection that the detail of the proposed scheme cannot resolve their concerns, nor that further dialogue between the applicant and Transport Scotland might also find acceptable solutions to both parties. On that basis officers recommend approval of the application subject to conditions and notification of the application to Scottish Ministers.

## Call In Letter and Direction

1.11 Following notification as referenced above the Scottish Ministers decided on 13 December 2018 to require the application to be referred to them for determination. The Direction was given in view of the proposed development's possible implications for the nationally important dualling scheme on the A9.

## CHAPTER 2: LEGISLATIVE AND POLICY CONTEXT

### Legislative Context

2.1 My assessment is carried out with regard to the development plan and other material planning considerations in accordance with section 25 of the Town and Country Planning (Scotland) Act 1997.

### Development Plan Context.

2.2 The relevant development plan context is established through the [Cairngorms National Park Local Development Plan 2015](#):

#### Policy 2: Supporting Economic Growth

Proposals which support or extend the economy or enhance the range and quality of economic opportunities or facilities will be considered favourably where it is compatible with the existing business activity in the area and supports the vitality and viability of the local economy and broader economy of the National Park.

#### Policy 3: Sustainable Design

This mainly applies to the requirement for all development to address any effects on climate change, the traditional pattern and character of the surrounding area, appropriate siting and landscaping and appropriate access including through the path network.

#### Policy 4: Natural Heritage

Applies protection to a hierarchy of international and national designations, other important natural heritage sites and interests, protected species and wider biodiversity objectives with reference to appropriate mitigation and compensatory provision.

#### Policy 5: Landscape

Presumes against development which does not conserve and enhance the landscape character and special qualities of the National Park and in particular the setting of the proposed development unless any significant adverse effects are outweighed by benefits of national importance or where the adverse effects are sufficiently mitigated.

#### Policy 10: Resources

This requires minimisation of use of abstracted water, protection of water quality and the ecological status of water bodies, that flooding issues are addressed and appropriate buffer zones retained around water courses. Culverting should be avoided as should unnecessary engineering works appropriate provision should be made for sewerage including connection to the public network unless risks can be addressed and subject to appropriate waste management and minimisation.

2.3 There is no direct reference in the development plan to the A9 dualling, but it is relevant to note that the accompanying text to Policy 2 (Supporting Economic Growth)

states an aim to ensure that all development opportunities are supported by 'fit for purpose' infrastructure, enabling access to the wider economy both within the National Park as well as connecting to the wider country.

#### Other relevant policy documents

2.4 The following documents are also considered relevant given they are referenced in the [submissions of Transport Scotland](#) to support its position that the priority and status of the proposed A9 dualling scheme is a material consideration.

2.5 The National Planning Framework (NPF3), June 2014: Under "*Spatial priorities for change*" NPF3 sets out an aim to have better connected cities, noting that the road network has "*...an essential role to play in connecting cities by car, public transport and active travel...*" and stating "*...we will complete the dualling of the trunk roads between cities, with the dualling of the A9 between Perth and Inverness by 2025...*" (section 5.20). In addition NPF3 states that the dualling will "*...provide a step change in accessibility across the rural north, increase business confidence and support investment in the region...*" (section 5.32).

2.6 Scottish Planning Policy 2014: This includes the outcome "*a more connected place*" in line with NPF3 and sets out how that should be delivered on the ground noting "*...improved connections facilitate accessibility within and between places – within Scotland and beyond – and support economic growth and an inclusive society...*" (section 23). The SPP also includes a presumption in favour of development that contributes to sustainable development including a guiding principle for policies and decisions that "*...support delivery of infrastructure, for example transport ...*" (section 29)

2.7 Cairngorms National Park Partnership Plan 2017-2022: With regard to Priority 4: Visitor Infrastructure and Information it states that "*...the dualling of the A9 will bring opportunities and challenges over the next decade and that it is important to maximise the benefits both during construction and operation...*" (page 46).

2.8 In consideration of Priority 5: Active Cairngorms, the NPPP also recognises that "*...the dualling of the A9 provides the opportunity to improve access infrastructure and promotion to encourage more active travel both by residents and visitors...*" (page 50).

2.9 Under the heading Community Capacity and Empowerment the document states we will "*...establish /collaboration over a focused time period to the Dalwhinnie, Kingussie, Laggan and Newtonmore area from 2019/20, making the most of investment in the A9..*" (Page 67).

2.10 The document states that as part of the Economic development of the National Park action should be taken to "*...maximise the opportunities for business, communities and visitors from the A9 Dualling project...*" (page 70)

2.11 As part of the overall Rural Development Policy Framework, Policy 3.2 (page 74) aims to assist with achieving Priority 9: Economic Development, and states that "*...sensitively designed improvements to the A9 will be supported as an integral part of enhancing the connectivity of the Highlands...*" and the A9 dualling is highlighted

2.12 Proposed Cairngorms National Park Local Development Plan 2020: The plan states that proposals to dual the A9 will strengthen and improve connections around the park (page 13).

2.13 The Strategic Transport Projects Review 2008/2009: The strategic business case for the A9 Dualling Programme was established by the Scottish Government's Strategic Transport Projects Review. This presented both the upgrading of the A9 between Dunblane and Inverness and rail enhancements on the Highland Main Line between Perth and Inverness as strategic transport investments to support the delivery of the Scottish Government's Purpose.

2.14 The National Transport Strategy 2016: On page 29 this reaffirms Scottish Ministers commitment to investing in the A9 dualling between Perth and Inverness by 2025 (page 21). It sets out the following strategic outcomes:

- 'improve journey times and connections, to tackle congestion and the lack of integration and connections in transport which impact on high level objectives for economic growth, social inclusion, integration and safety;
- reduce emissions, to tackle the issues of climate change, air quality and health improvement which impact on high-level objectives for protecting the environment and improving health; and
- improve quality, accessibility, and affordability, giving people a choice of public transport where availability means better quality services and value for money, providing an alternative to the car.' (page 2)

2.15 Scotland's Economic Strategy, March 2015: Scotland's Economic Strategy is the most recent economic strategy for Scotland and sets out an over-arching framework for how the Scottish Government aims to increase competitiveness and tackle inequality in Scotland. It sets out the strategic direction for current and future Scottish Government Policy. The document states that a central feature of the strategy is the approach to supporting investment including strategic and long term investment in infrastructure such as "...investment to dual the A9..." (page 40).

2.16 TACTRAN Regional Transport Strategy Refresh 2015-2036: This includes Strategic Connectivity Strategy 6 (SC6) to "work with Transport Scotland to support delivery of STPR projects to upgrade the A9 between Dunblane and Inverness...". (section 5.1).

2.17 The Highland Council Local Transport Strategy, 2010/11 – 2013/14: This references improvements to the A9 as important to satisfy demand and create new opportunities for jobs. Dualling south of Inverness is a stated priority.

## CHAPTER 3: THE APPLICANT'S CASE

### Matters in dispute

3.1 It should be noted that the following are the exact and only matters of objection by Transport Scotland:

- The impact on the proposals for the A9 Dualling Crubenmore to Kincaig project (Draft Orders for this project were published on 4 September 2018).
- The planning application proposals overlap with plots 728 and 801 of The A9 and A86 Trunk Roads (Crubenmore to Kincaig) Compulsory Purchase Order 201[ ].
- There is also an impact on plot 207 of the A9 and A86 Trunk Road (Crubenmore to Kincaig) (Side Roads) Order 201[ ].

3.2 More specifically, that the planning application impacts on the following elements of the proposed scheme:

- Delivery of the northbound carriageway
- An access track to Lynvoan Cottage, which also forms part of a new shared Non-Motorised User facility
- The diversion of an unnamed watercourse lying to the south of Lynvoan Cottage and passing under the existing A9 at this location
- Environmental mitigation including native woodland planting, mammal fencing and noise mitigation.

3.3 There are no other matters in dispute.

### Justification and Agreement

3.4 The previous [presentation to the Cairngorms National Park Authority](#) explained that:

- The land required for the delivery of the northbound carriageway can be avoided.
- The detailed design can avoid any impact on the proposed non-motorised access provision to Lynvoan Cottage.
- In terms of the unnamed watercourse there is a minor overlap but there is opportunity to retain buildings to the northern two thirds of the site and to design landscape and drainage in accordance with the A9 proposals.
- In terms of the woodland planting provision required to mitigate the impact of the A9 proposals conflict with the proposed access track could be avoided by using alternative sites.

3.5 The nature of the application and the conditions as proposed and agreed with the National Park Authority would enable the final proposal to align with Transport Scotland's A9 dualling proposals.

3.6 The conditions listed specifically require the approval of details by the Cairngorm National Park Authority in consultation with Transport Scotland. This condition is categorical in establishing that permission for a detailed layout will only be approved if, and only if, the plan can "*demonstrate alignment*" with the A9 project.

3.7 Following Scottish Ministers' intention to call-in the application it was re-iterated, to the park authority, that work was ongoing with Transport Scotland to ensure there is no impact on the delivery of the A9 Scheme. This communication detailed the good working relationship with Transport Scotland and its A9 project team and confirmed that there would be no impact on the delivery of the northbound carriageway, the access track to Lynvoan Cottage and the diversion of the unnamed watercourse.

3.8 In relation to the impact upon the A9 dualling project's native woodland planting proposed agreement could be reached on alternative areas for new planting, so the farm will not impact on the delivery of the scheme.

3.9 The relocation of the farm is critical to the future of the Estate, its long-term management and successful operation and there are no alternative sites. In this context the details of the development and layout must, and will, be designed in a way that accords with good practice, minimises landscape and environmental impacts and complies with the requirements on all matters specified in conditions.

3.10 A [draft minute of agreement dated 27 February 2019](#) details the arrangements to be implemented to ensure the delivery of the A9 dualling scheme and allow both developments to proceed alongside one another. Further written submissions indicated that matters had been agreed with Transport Scotland to the extent that there would be no impact on the A9 dualling scheme. On this basis it is considered that the agreed position on the matters in dispute within the context of this current planning application should allow Transport Scotland's objection to be resolved. This would allow relocation of the farm buildings. Transport Scotland should withdraw its objection on this basis.

3.11 Closing submissions then confirmed that the referenced agreement was a contractual agreement and that there was no suggestion that this could be part of an agreement under section 75 of the Town and Country Planning (Scotland) Act 1997.

### Proposed Conditions

3.12 In response to the detailed wording of conditions as proposed by Transport Scotland in place of those already recommended by the park authority condition a) was considered acceptable.

3.13 In reference to the reporter's question as to whether the conditions were sufficiently precise the wording "the areas of land within the application site which are required for the delivery of the A9 dualling scheme" is considered sufficiently precise and clear as it refers to a plan with specific and well defined areas with clear boundaries.

3.14 Condition (a) as suggested states that the land "shall be safeguarded and kept free of all development unless otherwise agreed in writing with the Planning Authority, in consultation with Transport Scotland". This would protect the land from any development that would threaten the delivery of the A9 dualling scheme, but at the same time allowing certain works to progress, if agreed with the planning authority, in consultation with Transport Scotland. This approach would follow the agreement reached between the applicant and Transport Scotland. It would meet the 6 tests for conditions, as required by Circular 4/1998.

3.15 The locational and detailed requirements for the access are well covered by the proposed Condition as recommended in the planning officer's handling report to Committee - specifically Conditions 1 (f) and (l). The applicant concurs with the planning authority in its letter of 21 March 2019 that Transport Scotland's proposed condition (b) is not necessary. Should the reporter wish however, to include this condition (b), the applicant would suggest that the highlighted text below be removed. This would suffice to ensure the detailed access arrangements are submitted and approved by the planning authority in consultation with Transport Scotland.

b. That notwithstanding the access arrangements shown on the Indicative Site Layout Plan (Drawing No.50277/101), **the location of the access road and its connection to the public road network shall require the prior written approval of the Planning Authority in consultation with Transport Scotland.** No development shall commence on site until a detailed plan showing the access arrangements have been submitted to and approved by the Planning Authority in consultation with Transport Scotland. Thereafter the development shall be implemented in accordance with the approved details.

3.16 Furthermore, in relation to the above wording in Transport Scotland's most recent submission (28th March 2019) reference is included to the "connection to the public road network" - this is however beyond the application site boundary, not included within the proposed development. The current application is for a new farm access connection to the existing internal private Estate road network, from which it will connect to the public road network via the existing routes, or via a future arrangement as included within Transport Scotland's proposed A9 Dualling Scheme.

3.17 As to the matter raised by Transport Scotland as to the possibility of a new house associated with the farm it is confirmed that this is not included in the description of the development and is not part of this application.

## **CHAPTER 4: THE CAIRNGORMS NATIONAL PARK AUTHORITY**

4.1 Cairngorms National Park Authority officers and the Planning Committee were clearly aware of the potential for conflict between the proposed development on this site and the A9 Dualling Scheme in this location. That is why the recommendation to approve the application for planning permission in principle was conditioned on further detail to be supplied to demonstrate alignment with the A9 dualling proposals as well as approval in consultation with Transport Scotland. This approach safeguards the delivery of the A9 Dualling Scheme.

4.2 The planning application was made for planning permission in principle, not for detailed planning permission. A grant of planning permission in principle does not guarantee a right to develop. The right to develop is only achieved once requisite matters for the detailed scheme have been approved. Even then, an approved scheme may not be implemented because a developer does not have control of land, either through ownership, or agreement of another owner. In this case, the applicant will have to overcome both issues in order to gain the ability to develop a farm.

4.3 The approach to approval of planning permission in principle provides the applicant with an opportunity (during the three years or other timescale directed for the duration of planning permission in principle) to explore the detail of a new farm development on the site identified within the context and constraints of the A9 dualling proposals and the ownership and control of land. If the applicants are unable to develop land within the application boundary, it will affect the detail of their proposals and could affect whether they pursue the development at all. The applicants have clearly acknowledged that they must avoid impacts on the A9 and that they will require to work with Transport Scotland if their proposals are to be realised.

4.4 Wording has been provided to address the integration of the conditions as proposed by Transport Scotland (where considered appropriate) with the wider considerations to be addressed in any approval of reserved matters.

## CHAPTER 5: TRANSPORT SCOTLAND'S CASE

### The A9 Dualling Scheme

5.1 Concerns focus on the possible implications of the proposal on the nationally important dualling scheme on the A9.

5.2 Transport Scotland as the agency for the Scottish Ministers and as Trunk Roads Authority, are seeking to make various Road Orders and a Compulsory Purchase Order ("CPO") to dual the A9 Trunk Road between Crubenmore and Kincaig ("the Dualling Scheme").

5.3 The background to, the need for and the objectives of the Dualling Scheme are summarised in the DMRB Stage 3 Environmental Statement, Non-Technical Summary (September 2018) [[Document TS004](#)]. This document also summarises the iterative design development of the Dualling Scheme and its environmental impacts.

5.4 The scheme will provide a dual carriageway consisting of generally online widening including the incorporation of grade separated junctions at Newtonmore and Kingussie. Near Kingussie, the proposals includes a localised section of offline widening, taking the Spey bridge crossing and embankment offline to the east of the existing structure. There will be no gaps in the central reservation in order to prevent right-turn manoeuvres across the carriageway.

5.5 The upgrading includes landscaping along the route in order to integrate the design with existing landform. Provision of access tracks will maintain access to local estates and properties. Three northbound left-in/left-out accesses will retain direct access onto the A9 from the local road network. The first of these is where the Glen Truim/Catlodge Road will be extended to link with the Raliabeag Road. The second links to the north end of the Ralia-Nuide Road, with the third northbound at Balavil. Each northbound access is connected to properties on the southbound side via local underpasses.

5.6 Areas of Ancient Woodland Inventory fall within the Dualling Scheme, therefore removal of existing woodland will be necessary on the Dualling Scheme. Compensatory planting of woodland would be undertaken where woodland is lost with the aim to maximise biodiversity of planting, maintain connectivity of existing ancient woodland sites and maximise functionality of local ancient woodland communities throughout the route corridor.

5.7 The relevant draft orders that relate to the Dualling Scheme and are as follows:

- The A9 and A86 Trunk Roads (Crubenmore to Kincaig) Compulsory Purchase Order 201[ ] [[Document TS005](#)];
- the A9 and A86 Trunk Roads (Crubenmore to Kincaig) (Trunking) Order 201[ ]
- the A9 and A86 Trunk Roads (Crubenmore to Kincaig) (Side Roads) Order 201[ ] [[Document TS006](#)]; and
- the A9 Trunk Road (Crubenmore to Kincaig) (Extinguishment of Public Rights of Way) Order 201[ ].

5.8 These draft Orders and the Environmental Statement for the Dualling Scheme were published on 4 September 2018, following a lengthy period of iterative design development and consultation with affected landowners, including the applicants Balavil Estate Limited.

## Overlap and area of concern

5.9 This application for planning permission in principle subject of this called-in proposal for farm buildings was lodged with The Highland Council and validated on 12 September 2018.

5.10 Once a preferred route is identified at the end of the Design Manual Roads and Bridges (DMRB) Stage 2 Assessment, the alignment of the trunk road improvement is generally fixed. This allows the DMRB Stage 3 design and assessment work to be undertaken, one of the functions of which is to identify the land required for the construction, maintenance and mitigation of the trunk road improvement works.

5.11 It is not possible (as a matter of law) to amend the draft Orders to add elements such as new or amended lengths of roads or accesses or additional land. Furthermore if elements of the supporting design are amended to the degree that their environmental impact would increase, an addendum to the Environmental Statement or new Environmental Statement is required to be published. These changes come with further statutory objection and representation periods.

5.12 The roads scheme as presently designed does not impact the existing farm steading at Balavil Home Farm, and enhances connectivity between the steading and the majority of the Balavil farming operations by means of a larger and improved underpass beneath the A9. This is as explained in the Report entitled "A9 Dualling Perth to Inverness - Policy Context" [[Document TS002](#)]. The dualling Scheme is a key component of Scottish Government policy, including the Infrastructure Investment Plan (2015), National Planning Framework (2014) and National Transport Strategy (2016).

5.13 Annex A of the Circular 3/2013 (Development Management Procedures) states at paragraph 6 that:

“the planning system operates in the long term public interest. It does not exist to protect the interests of one person or business against the activities of another. In distinguishing between public and private interests, the basic question is whether the proposal would unacceptably affect the amenity and existing use of land and buildings which ought to be protected in the public interest, not whether owners or occupiers of neighbouring or other existing properties would experience financial or other loss from a particular development”.

5.14 The land which is identified in the draft Compulsory Purchase Order is required for the public interest, and should be protected. The Dualling Scheme is a project which would be consented through the making of orders under the Roads (Scotland) Act 1984, as amended ("the 1984 Act"). Section 220 of the 1997 Act provides that planning permission will not be required for projects undertaken by statutory undertakers (which includes Transport Scotland) where that development is authorised by government department, and this includes for land which is purchased by CPO. In other words, the Dualling Scheme does not require planning permission.

5.15 Both projects are progressed under different legislative regimes. There is no hierarchical relationship between the two Acts, both of which constitute principal legislation. As explained in the Policy Context Report [[Document TS002](#)], the A9 Dualling Programme

as a whole is of national importance in terms of meeting stated policy objectives of the Scottish Government, and is accordingly a material consideration in any decision whether to grant or refuse planning permission in principle for the current proposal.

5.16 There is overlap between that site and certain areas proposed to be acquired by virtue of the draft CPO for the Dualling Scheme. There are three areas of overlap as shown on the plan entitled "DMRB Stage 3 Balavil Access Plan" [\[Document TS018\]](#).

5.17 This land is required for the construction, maintenance and mitigation of the Dualling Scheme. This is of particular importance having regard to what is said in Paragraph 28 of the Cairngorms National Park Authority Report to Committee, dated 9 November 2018 which states:

"In considering Transport Scotland's response, the CNPA need to bear in mind that whilst the A9 dualling proposals have been published for consultation, they are not yet a fixed and detailed scheme. Parties have objected to the A9 dualling proposals and there is likely to be a period of negotiation of the detail as well as potential challenge before the scheme is fixed. Even then, at various points on the route, there may be changes to the scheme prior to and during construction."

5.18 This paragraph fundamentally mis-states and misunderstands the effect and purpose of the draft Orders. It is not the case that the design of the Dualling Scheme is in a state of flux, nor that an interim design has been produced. The publication of the draft Orders and Environmental Statement is the outcome of four years of design and assessment work, with the design now essentially fixed and developed to a sufficient level of detail to determine the land required for the Dualling Scheme and to allow an assessment of its environmental impacts during construction and operation to be undertaken.

5.19 While minor amendments to the design may be agreed in due course, fundamentally these must be capable of accommodation within the land identified within the draft CPO, and must comply with the assessment of environmental impact. The opportunity to alter the design of the Dualling Scheme at this stage is very limited without compromising the work undertaken to get to this stage, and losing years of investment in the design process. Such change in design would cause significant delay to the overall Ministerial commitment to dual the A9 by 2025. Such delay, and the waste of the time and expense incurred to progressing the Dualling Scheme to date is not in the public interest.

5.20 Where there is an overlap between the proposed development and the Scheme, that land will be acquired compulsorily after the draft Orders have been made (through the execution of a General Vesting Declaration). In terms of recent discussions between the parties not all of that land will be available for the delivery of the proposed farm relocation. Some of the overlap land may be made available but only subject to additional agreements between the parties being in place. Such agreements are outwith the scope of this planning permission, and in respect of which, at present, there is no guarantee it will be possible to agree.

5.21 The land take cannot be reduced in size without threatening the deliverability of the Dualling Scheme. Construction at this location will require careful planning to deliver the works in the land in the CPO lying between the proposed Development and the existing A9.

5.22 The areas of overlap referred to as areas A, B & C, respectively) as shown on the plan (Document TS018) relate to plot numbers 728 and 801 included within the draft CPO. Plots

728 and 801 are shown on Sheets 7 and 8 of the CPO Drawings attached to the draft CPO [\[Document TS005\]](#), and are shown in more detail on [Documents [TS022](#), [TS023](#) and [TS024](#)].

5.23 Plot 728 is 46,286 square metres in total and is required to form the A9 Northbound Carriageway, including a culvert over the Allt Cealgach, and another “unnamed” watercourse above Lynchat, an alternative means of access to “Lynvoan” cottage and “Upper Raitts” and environmental mitigation replacement native woodland planting.

5.24 Plot 801 is 133,040 square metres in total and is required to form the A9 Northbound Carriageway, including a culvert over the Raitts Burn, and another small “unnamed” watercourse above Lynchat, an alternative means of access to “Lynvoan” cottage and “Upper Raitts” and environmental mitigation replacement native woodland planting. This plot is also required for Compensatory Flood Storage and a new replacement underpass providing access to the northbound side of the Balavil Estate.

### Conditions

5.25 Whilst condition (a) would potentially cover the access arrangements given that it requires details of all development to be approved, the conditions should be clear that the access arrangements as shown on the indicative plan are not approved. This provides clarity for the applicant in developing a detailed layout (particularly if ownership were to change).

5.26 While agreement may be reached and concluded directly between the parties regarding acceptable arrangements, this private agreement does not of course obviate the need for appropriate planning conditions. The following conditions are proposed:

a. That no development shall commence on site until a detailed plan of the proposed layout of buildings, and all ancillary development (including drainage design and SUDS), which also shows the areas of land within the application site which are required for the delivery of the A9 Dualling Scheme has been submitted to, and approved in writing by the Planning Authority in consultation with Transport Scotland. Thereafter, these areas (required for the delivery of A9 Dualling Scheme) shall be safeguarded and kept free of all development unless otherwise agreed in writing with the Planning Authority, in consultation with Transport Scotland; and

b. That notwithstanding the access arrangements shown on the Indicative Site Layout Plan (Drawing No.50277/101), the location of the access road and its connection to the public road network shall require the prior written approval of the Planning Authority in consultation with Transport Scotland. No development shall commence on site until a detailed plan showing the access arrangements have been submitted to and approved by the Planning Authority in consultation with Transport Scotland. Thereafter the development shall be implemented in accordance with the approved details.

Reasons – to ensure that adequate land is safeguarded for the delivery of the A9 Dualling Scheme and its environmental mitigation."

## CHAPTER 6: REPORTER'S CONCLUSIONS

6.1 I am required to determine this application in accordance with the development plan, unless material considerations indicate otherwise.

6.2 To enable my understanding of the matters arising I sought further clarification of the relevant matters in my procedure notice dated 14 February 2019. This sought to confirm the relevant policy content, to clarify the need for Environmental Impact Assessment under the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 ("the EIA regulations") and to further clarify the position of Transport Scotland in objecting to the proposal.

6.3 On the first matter I issued [a Screening Direction](#) on behalf of Scottish Ministers dated 9 April 2019 which concludes the [proposal is not EIA development](#).

6.4 On the second matter I received clarification and submissions on the relevant policy context which is as set out in Chapter 2

6.5 On the third matter I received submissions from all three parties confirming the areas including in map form along with further details on the status and progress of the A9 dualling scheme. The relevant written submissions are attached as Appendix 2 to this report.

6.6 In this case it is clear from the submissions there is no dispute between parties regarding compliance with the relevant development plan policies. My assessment of the proposals against these policies is set out in the following paragraphs.

### Policy 2 Supporting Economic Growth

6.7 I consider that some support can be drawn from this policy given the evidence the applicant has presented on the benefits of relocation of the farm on this side of the A9. The farm is an existing business so the benefits would be restricted to the potential enhancement of the future operation of that business. There is no specific reference to the A9 dualling scheme.

### Policy 3: Sustainable Design

6.8 This policy raises a range of issues relevant to this application. Some of these detailed matters are not directly addressed at this stage given that this is a planning application in principle. In principle there is nothing to indicate that the scale and nature of the proposal would conflict with climate change objectives.

6.9 In addition farming and farm buildings are a characteristic of the surrounding landscape. Indeed there are existing farm buildings on the opposite side of the A9. The established woodland provides some landscape setting and a sensitively sited and designed group of farm buildings would avoid conflict with the traditional pattern or character of the surrounding area.

6.10 The majority of the Core Path (LBS146) leading westwards to the Souterrain and Raitts Village from the northern portal of the underpass would not be impacted directly by

the development. Construction traffic would have a minor but temporary impact. I consider that safe public access could be maintained throughout the construction period.

6.11 There is no objection from the council as roads authority and no suggestion that path and road access could not be appropriately secured.

6.12 Consequently, I find no conflict with this policy based on the information available at this stage in the planning process.

#### Policy 4: Natural Heritage

6.13 Preliminary Ecological Appraisal ([EnviroCentre, September 2018](#)) has been undertaken and the scale and quality of lost habitat was not considered to be significant on the site or in the wider natural heritage context. Potential effects due to increased noise, vibration, lighting and human activity during construction and operation were assessed with regard to foraging or commuting bats, otters, red squirrels, pine martens and badgers. Proposed mitigation as detailed through that appraisal includes a Bird and bat box plan and the proposed construction method statement. This statement is intended to address mitigation pre-works checks for protected species undertaken by a suitably qualified ecologist or Ecological Clerk of Works (ECoW) prior to works commencing. No otter records were identified during the desk study.

6.14 I note that the presence of a large drainage channel and a number of ditches signals some connectivity to the River Spey. The majority of the drainage channels noted within the survey area were dry due to the prolonged dry weather, however during spring the drainage ditches are likely to offer the opportunity for opportunistic feeding on amphibians, and commuting to surrounding habitats. The planning authority confirms that with appropriate standard measures the development would not affect the water environment or sites protected under the Habitat Regulations. The authority's ecology officer found no likely significant effects and no corresponding need for Habitats Regulation Appraisal or Appropriate Assessment. On the basis of this evidence I have reached the same conclusion.

6.15 For these reasons I find no conflict with Policy 4 which applies protection to a hierarchy of international and national designations; other important natural heritage sites and interests; and to protected species and wider biodiversity objectives with reference to appropriate mitigation and compensatory provision.

#### Policy 5: Landscape

6.16 Whilst the site is in the National Park the presence of major infrastructure already impacts on the qualities of wildness and remoteness which are associated with other areas of the park. The scale and nature of the proposal mean that landscape effects would be localised. The Landscape Advisor to the Park Authority concluded that the landscape and visual impacts as well as adverse impacts on special landscape qualities could be reduced to an insignificant level. Proposed mitigation includes sensitive siting, high quality design and landscaping with ongoing-management to be specified and required through planning conditions. Given the characteristics of the site and its landscape context and subject to the appropriate mitigation in terms of siting, ground works and landscaping I consider the proposal could be accommodated without any significant adverse landscape effect on the

character and special qualities of the National Park. Consequently I consider that subject to confirmation of the appropriate details compliance with this policy could be achieved.

#### Policy 10: Resources

6.17 The development will be connected to mains water and private foul drainage. The development is proposed to include Sustainable Urban Drainage Systems (SUDS) designed in accordance with CIRIA SUDS Manual C753.

6.18 The submissions reference surface water runoff from new hardstanding areas being treated, attenuated and discharged to the unnamed burn at greenfield rates. Whilst [an indicative drainage plan](#) is included in the application details the area for the proposed SUDS scheme is within the area which is likely to be subject to A9 Dualling works and I address that matter below. It is not clear at this stage how alternative provision would otherwise be accommodated although the applicant states there would be sufficient scope to locate elsewhere on the site. I consider this is a matter that could be addressed through condition in the event that planning permission is granted.

6.19 The applicant's submissions indicate that use of abstracted water would be minimised. There is some preliminary indication that protection of water quality and the ecological status of water bodies can be addressed along with flooding issues and appropriate buffer zones retained around water courses. Culverting would be avoided as would unnecessary engineering works appropriate provision should be made for sewerage including connection to the public network unless risks can be addressed and subject to appropriate waste management and minimisation.

6.20 The planning authority's Flood Risk Management Team has no concerns regarding flood risk at this site, is satisfied with the approach outlined in the submission, and have provided advice on the level of detail required within future applications

6.21 Subject to the appropriate conditions to be attached to any grant of planning permission in principle I consider that compliance with Policy 10 could be achieved.

#### Other development plan matters

6.22 Transport Scotland question the need for the farm relocation and the reference in the description of the development that the application is "due to the dualling of the A9". However from my assessment of the development plan context as informed by the Cairngorms National Park Authority there is no presumption against agricultural development in the countryside. The reference to locational need for a countryside location in paragraph 1.37 of the local development plan appears to relate to other forms of development. Whilst I appreciate there may be disagreement as to whether the farm could have continued to operate from its current location the focus of my assessment is on the current proposals in the context of the above policies and any other material consideration.

#### Compliance overall with the development plan

6.23 From the above assessment my conclusion is that the proposal complies overall with the development plan. I accept the A9 proposals have a potential link to the economic objectives of the development plan. However the plan remains silent in terms of any specific reference to this scheme. The policies and proposals give no indication that the land subject

to this current application should be reserved or safeguarded for a roads scheme and I find nothing to lead me to the conclusion that there would be any consequent conflict with the development plan.

#### Material Considerations: Proposed A9 Dualling

6.24 In this case the submissions of parties have centred on considerations other than the development plan. These considerations relate to potential conflict with proposals for the dualling of the A9. The relevant dualling scheme is described as the Crubenmore and Kincaig Scheme and will involve upgrading the existing road along a 16 kilometre stretch to dual carriageway standard.

6.25 From a more local standpoint it is notable that the emerging local development plan and the Cairngorms National Park Partnership Plan 2017-2022, both of which postdate the current local development plan, reference the A9 dualling scheme and its associated benefits. However there is no detailed mapping or any indication of land to be reserved or safeguarded.

6.26 In calling in this application Ministers clearly consider the A9 dualling proposals as nationally important. This is reflected in the national policy documents referenced by Transport Scotland. These relevant documents are rehearsed in Chapter 2 of this report. Taken together I agree with Transport Scotland that the various references to national policy documents, most specifically the National Planning Framework, establish the A9 dualling proposals as a priority roads scheme in the national and public interest. The relevant wording in the National Planning Framework clarifies that the proposal is a national commitment and a land use planning consideration.

6.27 There is no contention that the dualling scheme is progressing and indeed construction work on some of the overall scheme has already commenced. As Transport Scotland state this work is progressing under separate legislation and there is no requirement for planning permission. My understanding from Transport Scotland's submission is that the proposals relevant to this application site are relatively advanced. A Stage 2 assessment as defined in the Design Manual for Roads and Bridges means the alignment of the road is generally fixed. The following stage (Stage 3) assessment aligns with the publication of the draft orders and the ES as published in support of this stretch of the dualling scheme.

6.28 Neither the park authority or the applicant dispute the statement by Transport Scotland that "it is not possible (as a matter of law) to amend the draft Orders to add elements such as new or amended lengths of roads or accesses or additional land." I understand from the submissions that these draft Orders and the Environmental Statement for the Dualling Scheme were published on 4 September 2018, following a lengthy period of iterative design. I am also aware that if elements of the supporting design are amended, to the degree that their environmental impact would increase, an addendum to the Environmental Statement or new Environmental Statement is required to be published.

6.29 I am aware that these changes would come with further statutory objection and representation periods. Document [TS03](#) sets out the steps engaged in the design of the dualling scheme and the statutory process relating to the draft compulsory purchase order (CPO) and draft road orders. That said it does not appear to me that the details of the A9 dualling, in so far as they impact on the application site, are completely fixed at this stage. The details including any Compulsory Purchase Orders and finalised road orders remain matters to be determined through the separate legislative process that is currently underway.

However, I appreciate that publication of the draft orders and the Environmental Statement on 4 September 2018 (paragraph 2.10 of Transport Scotland's position statement) provide substantive evidence that this is a committed project and one that is significantly advanced.

6.30 There is no safeguarding in the local development plan and where there is no conflict with the development plan consideration of an alternative proposed use for a site would not normally be a relevant consideration. Indeed an alternative application could be granted even where there was an extant scheme. Planning applications must be considered on their merits in terms of the provisions of the development plan unless other material considerations indicate otherwise.

6.31 Annex A of Circular 3-2013 on development management provides me with some guidance as to the extent the current road proposals can be considered as a material consideration. I appreciate that this is ultimately a legal matter and one on which Ministers may wish to take their own advice. However, I consider there is sufficient basis to establish that the A9 dualling is a relevant planning matter in the public interest and as referenced in government policy and the National Planning Framework. Its completion is recognised to contribute to national economic objectives. Clearly progress of works that would prejudice the timely commencement and completion of the A9 dualling by 2025 would run contrary to paragraph 5.21 of the National Planning Framework.

6.32 Taking all of these considerations together my conclusion is that the A9 dualling scheme and the land required for its delivery is a material consideration in this case. Consequently I consider that a positive recommendation on this application turns on whether sufficient assurance is provided that prejudice to this nationally important scheme can be avoided. Such consideration of prejudice should however reflect the development and use of the land and not wider financial and other considerations.

#### Areas in dispute

6.33 In the above respect there is considerable agreement between the three parties involved - Transport Scotland, the Cairngorms National Park Authority and the applicants. All agree that any works to be approved through this planning application in principle should be co-ordinated to avoid development on land within the application site that would be necessary (as established at this stage) to deliver the A9 dualling. From the evidence I understand that progress has been made on an agreement between Transport Scotland and the applicant as to how matters may be resolved. However the terms of such an agreement have no basis in this planning application nor is there any suggestion they should be included in an agreement under Section 75 of the Planning Act.

6.34 From the submission clarification is provided on the relevant parcels of land where there is potential conflict between the two schemes. These areas of overlap are as shown on [document TS018](#) (The DRMB Stage 3 Balavil Access Plan). This shows three areas of overlap as further detailed on [TS019](#) (Area A), [TS020](#) (Area B) and [TS021](#) (Area C). The applicant has confirmed these areas of potential overlap. I consider that these areas are an important consideration in the determination of this application.

6.35 Within these areas, given the commitment to the A9 and the current relatively advanced nature of the proposals including the environmental assessment process, there would be a strong likelihood of conflict between the two proposals. Area A is 2276 square metres and crosses over both of these plots. This area is identified as being required for

the proposed northbound carriageway of the A9 as well as for a combined non-motorised user route, access to Lynvoan Cottage and Upper Raitts adjacent to the A9 and a watercourse/open drainage channel required to drain the A9. Any alternative for south bound was ruled out at an earlier stage due to land use constraints including a scheduled ancient monument.

6.36 Area A falls within the current application site albeit that [the indicative layout](#) shows how the farm buildings would avoid this area. There is however overlap with the area indicated to accommodate the proposed Sustainable Urban Drainage Scheme. This area appears to be the main area of conflict and would undoubtedly reduce the developable area for the farm and any associated infrastructure provision. There is some concern and I consider a current lack of clarity about the drainage arrangements. Transport Scotland do not support any connection into the drainage system designed for the A9. The submitted drainage scheme would clearly conflict with the current dualling proposals. I accept that I have nothing to date to clearly demonstrate how this would otherwise be accommodated.

6.37 Area B is 1553 square metres and is an area indicated in the A9 Environmental Statement for compensatory woodland planting. This is shown on the indicative plan for the farm re-location as the route of the proposed access leading in from the established estate access road to the east. There is indication in the submissions of both parties of the possibility of alternative area(s) of compensatory planting or an alternative means of access to the proposed new farm.

6.38 Area C is a smaller area of 156 square metres at the intersection of the existing estate access road and the indicative new access road to the farm and is indicated for the proposed new access to Belavil House where transport Scotland would have to tie in the new access. It is noted that this intersection would not be required if the compensatory planting were to go ahead as currently proposed.

#### Options to address potential conflict

6.39 Taking all the above into account the following options are presented to me in taking the proposed A9 dualling into account:

- Recommend refusal taking into account Transport Scotland's continuing opposition to the proposal given its potential conflict with the A9 dualling. It considers the developable area within the application site boundary is significantly constrained and there is remaining uncertainty about how drainage provision and access can be resolved.
- Recommend approval of the proposal as determined by the Cairngorm National Park Authority subject to its recommended conditions. This option would accept that the concerns of Transport Scotland would be addressed by the suspensive nature and wording of its proposed conditions and given that this is an application in principle.
- Accept the further advice of Transport Scotland that in the event that planning permission is granted further refinement of the proposed conditions is necessary. This is required to identify the areas where development is not permitted to avoid conflict with the Dualling Scheme in those areas as identified within the draft Orders.

6.40 On the first of these options the indicative layout presented by the applicant provides some assurance that the proposed relocated farm, in so far as its livestock sheds and other buildings are concerned, could be accommodated on the application site whilst avoiding those areas identified for the A9 dualling. I have accepted above that there would be remaining uncertainty about the drainage arrangements and the proposed access.

6.41 Nonetheless, there appear to be options and other land within the applicants control even if that required further applications for planning permission. In my experience it would not be unusual for a separate application to be lodged for the land required for a SUDS scheme. Parties accept the possibility of alternative access and drainage arrangements albeit these matters may impact on the developable area of the site. This is a planning application in principle. By their nature suspensive conditions do not require surety that the specified matters can be addressed as planning permission is effectively withheld unless and until compliance can be demonstrated. I consider that the nature of this application and the opportunity for suspensive conditions could address any conflict between the two schemes. Consequently, I find no reason to conclude that the principle of farm relocation on this site could not be accepted subject to the appropriate application of conditions.

### Conditions

6.42 The remaining issue is the appropriate framing and application of any condition to address the matters raised above. There are a range of standard issues relating to siting, design and landscaping which require to be addressed at the detailed stage and to ensure the proposal is in accordance with the relevant policies of the development plan. There is no dispute on these matters and subject to some minor refinement I am content that the wording as proposed by the national park authority is appropriate and that those conditions should be attached to any grant of planning permission.

6.43 The specific issues of drainage and access are still subject of uncertainty and in my view need to be specifically addressed in light of the concerns of Transport Scotland. In addition, I consider that the provision of sufficient surety that conflict with the A9 dualling can be avoided requires a condition that is precise enough to clarify any consequent restriction on the developable area. I consider that such a condition is necessary to address the potential conflict with this scheme which is a material consideration in this case. Consequently, I consider that an appropriately worded condition in this respect would meet the relevant tests as set out in Circular 4/1998 on planning conditions.

6.44 To arrive at such a condition and to integrate these requirements with the other reserved matters relevant to this application I have carefully considered the position of the applicant, the Cairngorms National Park Authority as summarised above.

6.45 The original condition as proposed by the council grouped all the reserved matters subject to approval by them in consultation with Transport Scotland and the Highland Council where appropriate. Part c) of that condition then stated:

- c) Detailed plan of the proposed layout of buildings and all ancillary development (including drainage provision and SUDs) on a contour base plan to demonstrate alignment with Transport Scotland's A9 upgrade proposals;

6.46 I consider this goes some way to address the issue but that the wording is insufficiently precise. Consultation with Transport Scotland is referenced in the introduction

“as where appropriate” rather than specifically in the context of c). In addition the general reference to the A9 upgrade proposal lacks precision and could introduce ambiguity particularly as there is no specific reason for this part of the condition.

6.47 I consider the suggested condition by Transport Scotland goes some way to address this by separating out this requirement and requiring a detailed plan prior to the commencement of development. That plan would require the approval of the planning authority in consultation with Transport Scotland. It should be noted that whilst Transport Scotland would be consulted on the detailed plan approval would be a matter for the planning authority. Transport Scotland’s version of the suggested condition provides a relatively more precise reference to “the areas of land within the application site which are required for the delivery of the A9 Dualling” and the stated reason – “to ensure that adequate land is safeguarded for the delivery of the A9 Dualling Scheme” provides explanation as to why this is necessary.

6.48 Transport Scotland also advises the addition of a further specific condition on the proposed access specifying this should instead be taken from the south-west of the application site. I understand they have suggested a combined access with Lynovaon cottage and that this is Transport Scotland’s preferred option. However the connection to the public road required in that option falls outwith the application boundary and I consider this requirement may be inappropriate and too prescriptive at this “in principle” stage. That said the applicants confirm they are content for the details of the access to be retained as a reserved matter.

6.49 I consider that the avoidance of the areas of overlap may not be sufficiently assured by the intended conditions of the National Park Authority. In addition whilst the submissions show the areas of overlap on a map base the suggested wording of the associated condition(s) simply identifies these as “areas of land within the application site which are required for the delivery of the A9 dualling scheme”. More precision in the description should address, as far as possible, any concern that the council and Transport Scotland could disagree on the appropriateness or otherwise of the submitted plans bearing in mind that any decision on this would rest with the Planning Authority.

6.50 Given that the rationale for this condition is based on the description of areas A-C and the potential land use conflict arising within these areas I find that a more precise wording is required if this condition is to meet the tests as set out in the Circular. To that end my recommendation seeks to further clarify that description with specific reference to the areas A-C as defined in the submitted map based evidence. This provides clarity as to the scope and extent of these areas and requires the layout, drainage and access to be confirmed and approved prior to the submission of other reserved matters. Reference to the specified areas clarifies those areas of the site to be reserved for the A9 dualling. At the same time I recognise the wording must allow a degree of flexibility in the future event that this land is no longer required for the A9 dualling. My recommended wording reflects this.

### Overall Conclusion

6.51 In conclusion I consider that the proposal is in accordance with the development plan. In this instance the A9 dualling, given its national priority and current advanced status, is a relevant matter. The commitment to the completion of the A9 dualling, as expressed through the National Planning Framework and other national policy documents, is a material planning consideration. Consequently, I consider that any approval of this current planning application

should be conditional on a clear demonstration that prejudice to the delivery of this roads scheme can be avoided.

6.52 However, my reasoning above supports a recommendation of approval subject to conditions. Given their suspensive nature and detailed wording I consider these conditions would address the identified areas of conflict between the two schemes.

6.53 The application is for planning permission in principle and I consider there is scope for revision of the layout and siting of buildings and ancillary works. Subject to such details there is a reasonable prospect that both proposals could be accommodated without any areas of overlap. In any event the suspensive nature of the conditions prevents development proceeding until these matters have been resolved and approved in writing by the planning authority in consultation with Transport Scotland. Subject to such conditions I consider that in the event that Ministers are to grant planning permission in principle any prejudice to the nationally import A9 dualling scheme would be avoided. In addition, my conclusion is that the appropriate safeguarding of the land likely to be required for the road improvements could be secured by condition in accordance with Circular 4/1998.

6.54 Subject to these recommended conditions I consider that the proposal is in accordance with the development plan and that no material consideration is sufficient to indicate refusal. Consequently, I recommend that planning permission in principle is granted subject to the conditions as recommended through Appendix 1.

  
Reporter

## APPENDIX 1 : RECOMMENDED CONDITIONS

1. Prior to the commencement of development and to the submission for the approval of the matters as specified in condition 2 below a layout plan shall be submitted to and approved in writing by the planning authority in consultation with Transport Scotland and with Highland Council as Roads Authority. This layout plan should show:

The proposed position of buildings, all ancillary development (including drainage design and SUDS) and the proposed access along with the areas to be reserved free of development as necessary for the delivery of the A9 Dualling Scheme. The areas to be retained free of development shall be identified in accordance with Areas A, B and C on the plan DMRB Stage 3 Balavil Access Plan" **[Document TS018]** as docketed to this planning permission in principle unless as otherwise specified and agreed in advance and in writing by the planning authority in consultation with Transport Scotland.

Thereafter the development shall be carried out in accordance with the approved layout plan and the areas reserved for the delivery of A9 Dualling Scheme shall be retained free of development unless and until it is otherwise confirmed in writing with the Cairngorms National Park Authority, acting as planning authority, in consultation with Transport Scotland, that these areas are no longer required for that purpose.

**Reason:** To clarify that the layout plan, access and drainage details as submitted as part of this application do not form part of this planning permission in principle. These matters are reserved in order to safeguard the land necessary for the delivery of the nationally important A9 Dualling Scheme and its associated environmental mitigation.

2. The submission for approval of matters specified in conditions of this grant of planning permission in principle in accordance with the timescales and other limitations in section 59 of the Town and Country Planning (Scotland) Act 1997 (as amended) shall include the following matters and shall be in accordance with the layout plan as approved through Condition One.

No work shall begin until the written approval of the planning authority has been given on these matters and thereafter the development shall be carried out in accordance with that approval.

- a) Design, siting and external appearance of buildings, open space and any other structures;
- b) a contour base plan to demonstrate a good fit of the proposed layout of buildings and all ancillary development (including drainage provision and SUDs) with landform and local hydrology
- c) Existing and finished ground levels in relation to Ordnance Datum;
- d) A minimum of 6 detailed sections through the site north/south and east/west, extending beyond the red line boundary to demonstrate a good fit with landform.
- e) the proposed access track and its surface treatment showing all associated cut/fill, earth strengthening and/or retaining structures and a good fit with landform.
- f) A detailed specification of all external materials – note: samples may be required;
- g) Detailed landscaping plan with full specification for on-site and any offsite planting. All species should be native, typical of the area, and of local provenance. New planting should screen/filter views from the A9, include planting within the building cluster to enhance the immediate environment and reflect existing tree and woodland features in the landscape.

The Landscape Plan shall be implemented in full during the first planting season following commencement of development.

- h) A Long term landscape maintenance schedule and management plan for all planting areas;
- i) Tree survey, arboricultural impact assessment and tree protection plan for the site, the tree-covered knoll north-east of the site and along the route of the access in order to demonstrate that the key woodland and tree characteristics of this landscape will be conserved and enhanced.
- j) Boundary treatments including heights and materials;
- l) Design and siting of farm and visitor vehicle parking;
- m) Drainage Impact Assessment;
- n) Final Drainage Plan including SUDS scheme and SUDS maintenance plan, percolation tests at the location of any infiltration features, and design calculations provided for 30 year and 200 year return periods plus climate change storm events;
- o) Lighting plan to minimise light spillage and light pollution;
- p) Bird and bat box plan;
- q) Construction method statement that incorporates the mitigation identified in the Preliminary Ecological Appraisal;
- r) Waste management and recycling facilities;

The development shall be implemented in accordance with those approved details unless otherwise approved in writing by the Cairngorms National Park Authority and be retained and maintained for the lifetime of the development hereby approved.

### ADVISORY NOTES

1. **Notice of the start of development:** The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start. Failure to do so is a breach of planning control. It could result in the planning authority taking enforcement action. (See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended).)
2. **Notice of the completion of the development:** As soon as possible after it is finished, the person who completed the development must write to the planning authority to confirm the position. (See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended).)
3. **Display of notice:** A notice must be displayed on or near the site while work is being carried out. The planning authority can provide more information about the form of that notice and where to display it. (See section 27C of the Town and Country Planning (Scotland) Act 1997 Act (as amended) and Schedule 7 to the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013.)

### SCHEDULE OF PLANS

#### [013 Location Plan](#)

Plan as docketed to Condition 1 above "DMRB Stage 3 Balavil Access Plan" [\[Document TS018\]](#).

#### [Preliminary Ecological Appraisal](#)

APPENDIX 3: WRITTEN SUBMISSIONS IN RESPONSE TO PROCEDURE NOTICE 14  
FEBRUARY 2019

Applicant

[Further Written Submission- Environmental Impact Assessment](#)

[Further Written Submission- Position Statement 6 March 2019](#)

[Response to Transport Scotland 20 March 2019](#)

[Response to Supplementary Questions 5 April 2019](#)

Cairngorms National Park Authority

[Response dated 28 February 2019 to Matters 1 and 2](#)

[Further written submissions dated 21 March 2019](#)

[Response to further questions 9 April 2019](#)

Transport Scotland

[Position Statement dated 7 March 2019](#)

[Document List](#)

[Response to Cairngorms National Park Authority 9 April 2019](#)

[Response to further questions 5 April 2019](#)

[Clarification of position 16 April 2019](#)