

## NATIONAL SCENIC AREAS AND BEYOND: THE NEXT FORTY YEARS IN LANDSCAPE PROTECTION IN SCOTLAND

This note seeks to contribute to the discussion about the future of National Scenic Areas and what might be done to promote wider landscape protection in Scotland.

### Celebrating Forty years

It is right and proper to celebrate the first 40 years of Scotland's National Scenic Areas. Thanks to APRS for leading on this. That they have survived the years of political disinterest is remarkable and is a tribute to the original work by W H Murray commissioned by the NTS, to the development and implementation work of CCS, to the review work of SNH and especially to the many in the NGO movement who have lobbied over the years for their continuation and fought hard to defend them in planning case work. We can be fortunate, I suppose, that the politicians never de-designated any despite pressure from developers and other antagonistic interests.

### The reality

But the sad fact is that NSAs are not really part of the strong family of protected areas in Scotland. Indeed, the analytical approach by the IUCN UK *Putting Nature on the Map* exercise proved conclusively that NSAs did not qualify as protected areas against the IUCN definition "as evidence of the effectiveness of protection of nature in planning policy was insufficient"<sup>i</sup>. This decision was not taken lightly by the assessors following preparation of a *Statement of Compliance*<sup>ii</sup> against the IUCN definition, and endorsed by the working group. We were frankly disappointed that we had to reach this conclusion. Hence Recommendation 8 of the report stated that "The relevant bodies in Scotland, England and Northern Ireland should examine and seek approval for the changes needed for NSAs, Heritage Coasts and AONBs respectively to pass the IUCN definition". Unfortunately, there has been no response from SNH in years since publication in 2014.

Even a cursory look at the NSA map shows a very skewed distribution towards the mountain and coastal landscapes of the Highlands and Islands, with little representation of the lower areas in the central and south of the country. It seems that it is only the spectacular areas that merit protection nationally. But societal values change and with more people going outdoors and visiting the countryside more areas are seen to have a value as a social construct.

We also have to look at the drivers internationally to see that landscape is a poor relation of nature protection. Compared to the protection of nature, looking after our landscapes and scenery is a very poor relation. Why is this? Partly, it is the seeming lack of political will across the political parties and governments of the day to give protection. Partly, it is the lack of international conventions and regional directives which would place a responsibility on government to protect landscapes. This is in marked contrast to nature with the Convention of Biological Diversity targets, and the EU Natura 2000 system for species and habitat protection. The European Landscape Convention is, by contrast, a weak advisory instrument, and was signed with great reluctance by the UK Government with the weak endorsement of the Scottish Government. It does not demand a protected area approach for landscapes.

Perhaps the strong linkage of NSAs to the statutory planning system has not helped matters. While other protection designations have full statutory backing, NSAs are listed as the 263<sup>rd</sup> section of the Planning (Scotland) Act 2006 and are considered only in that context. Even then, the duty placed on Ministers is very weak 'special attention is to be paid to the desirability of safeguarding or enhancing the character or appearance' (section 263A(2)). As any parliamentary draftsman or statutory legal

expert will tell us, this is very weak; meaning that once the desirability has been considered and the outcome documented the relevant authority can do what it likes. Furthermore, as stated in subsection (5) the designation can be cancelled. This does not compare favourably with other nature protection statutes where there are no such powers. Add to this, the focus under the current administrations on ‘sustainable economic development’, it is perhaps no wonder that NSAs are in a parlous policy and statutory state.

### A plan of action

So what needs to be done? To answer this question, we need to broaden the discussion beyond the National Scenic Areas to include the protection of landscape and scenery at the national and regional (and local) scales in Scotland.

There can be no doubting the importance of Scotland’s scenery and its landscape. Opinion surveys have consistently concluded that the scenery and landscape of Scotland are a major reason why people visit the country and why they come back. Our landscapes and scenery are also a source of cultural pride for residents and the diaspora. They are a reflection of the amazing story of Scotland’s Earth heritage and the interaction between evolving nature and human intervention over the last 5 millennia, resulting in the greatest diversity of landscapes in a small country in the world. But NSAs they have been a source of great contention in planning cases, especially for wind farms and fish farms. We do not have a secure and valued system of protection for our landscapes and scenery. It is sorely needed.

In thinking about the next 40 years, I suggest as a basis for discussion a 5 point plan of action.

#### 1. Outcome

First, we should decide what we want to achieve. From the foregoing and what was discussed at the APRS event, I suggest something along the following lines

“a national and regional system for the perpetual effective care, protection and management of Scotland’s finest and representative landscapes and scenery with modern policies, statutes and provision of resources that, in turn, will ensure that landscape protected areas pass the IUCN protected area tests.”

***Recommendation 1: agreement on the outcome of the landscape and scenery review.***

#### 2. Identification

Identifying the scenery and landscape of national and regional importance from the current knowledge and societal values should be the next step.

At present, the NSAs rely on the outstanding work of W H Murray in his report for NTS *Highland Landscape* and are based on the excellent work by CCS in broadening the coverage<sup>iii</sup>. However, the areas chosen are not representative of all of Scotland’s finest landscapes; they were not meant to. Now is the time to seriously review the coverage to include landscapes of **national significance in the underrepresented parts of Scotland**, particularly the Midland Valley and the Southern Uplands. The SNH led work with Local Councils on the Landscape Character of Scotland<sup>iv</sup>, alongside SNH’s review of the special qualities of NSA’s<sup>v</sup>, provides the intellectual base for a systematic review of the varying character of landscapes around Scotland. It could be used to search for other areas of the highest landscape quality in the underrepresented parts of Scotland. To undertake this exercise will require review of the original criteria in the light of increasing knowledge of landscape character, specifically the knowledge of the underpinning geodiversity which provides the landscape skeleton

and the surface land use/land cover and biodiversity, and what accords value, including changing societal values. One issue that will need to be resolved is whether ‘wildland’ as already defined and accepted as part of planning policy should be included.

***Recommendation 2: update the criteria for the identification of nationally important and nationally representative landscapes.***

***Recommendation 3: apply the criteria to both existing NSAs and to search for new areas of national significance especially in the Midland Valley and Southern Uplands.***

Regionally significant landscapes should also be reviewed. Identification of regionally significant landscapes around Scotland should be in the old Structure Plans and in the more recent Local Plans. This information should be consolidated to provide an overview for the whole country.

***Recommendation 4: consolidate and areas identified as regionally significant landscape areas in local plans and review their validity and coverage.***

### **3. Policy**

Developing a supportive policy framework is the next step. There are two aspects to this issue: identifying those policies which support national and regional landscape protection and those policies which undermine protection and management, and to determine what changes are needed in policy to achieve the ultimate goal of effective protection and management. It is clear that the Scottish Government’s forestry strategy (currently out to consultation) and the policy on onshore wind farms will have material effects on the landscape and could impinge on the quality of these areas, even if the developments are outside the boundaries of the protected landscapes. Likewise, the inevitable changes in upland agriculture in the light of EU-Exit will have an effect on land use in the hills and islands where there is currently the concentration of the NSAs.

The Land Use Strategy should provide the overarching framework, but the Scottish Government sees it as a subservient mechanism to the planning system and particularly the National Planning Framework (a new version of which is being prepared). However, the ideas for regional indicative land use strategies<sup>vi</sup> are a way forward in identifying the current land use conflicts and how they can be overcome through joint working between all of the land interests. More effective management can be assured if the principles in the Scottish Land Rights and Responsibilities Statement under the Land Reform (Scotland) Act 2016 are applied uniformly to all land and to all owners and managers of land.

***Recommendation 5: Review those policies detrimental to landscape protection and management and recommend new policies particularly with reference to forestry, agriculture, renewable energy and transport infrastructure.***

### **4. Legislation**

The next step is to propose new legislation to provide the basis for effective protection and management of Scotland’s finest national and regional landscapes. Many of the provisions of Section 263A could stand, specifically Sections (1), (3), (4), (6), (7), (8) and (9). Only Section (2) on balancing duties and section (5) on de-designation are not appropriate.

However, there should be an opportunity to create a modern statute which reflects changes in policy, thinking and activity. Attaching NSAs to planning legislation is no longer valid given all of the other land use changes that fall outside the formal town and country panning system that impinge on landscape quality. The old approach also demeans landscape protection compared to nature

protection. There is clear duty placed on SNH under Section 1 (2) of the Natural Heritage (Scotland) Act 1991 “to secure the conservation and enhancement of; and to foster understanding and facilitate the enjoyment of, the natural heritage of Scotland”; natural heritage being defined to include natural beauty and amenity. But the Act is weak in that it gives the responsibility to SNH to work with and persuade others, rather than giving a duty on other parts of the public sector. Equally, the ‘balancing duty’ placed on local councils under Section 263A of the Planning (Scotland) Act 2006 is weak as previously stated and does not include other authorities. In the light of the Rights and Responsibilities Statement, there is a need to update the duties to apply to all land owners and managers and all who have an influence on the way the lands is used and managed. These points should form the foundation of new landscape protection legislation.

Consideration will need to be given whether to argue for a separate statute to protect Scotland’s finest and representative national and regional landscapes or to attach the provisions to another piece of appropriate legislation. I prefer the former as it will, at last, give prominence to the importance of landscape protection, but it might be difficult to obtain support from the Scottish Government given its recent reticence about landscape protection. An alternative would be to attach the provisions to a new environment bill which could be forthcoming in the light of the consultation on an environmental strategy<sup>vii</sup>. Certainly, such a broader based bill is supported by Scottish Environment LINK<sup>viii</sup> and the Royal Society of Edinburgh<sup>ix</sup> in recent reports

***Recommendation 6: develop the proposals for new legislation for effective protection and management of Scotland’s finest and representative landscapes.***

## 5. Campaign

A good first step in mounting a campaign for better protection and management of Scotland’s landscapes is the formation of the Landscape Alliance. It should focus on developing a multifaceted agenda, maybe along the lines recommended above. Only then can it engender support across the various constituencies of interest in the hope of persuading SNH and in turn the Scottish Government and other political parties to take action.

***Recommendation 7: Landscape Alliance to develop campaign contents and strategy.***

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<sup>i</sup> <https://portals.iucn.org/library/node/44891>

<sup>ii</sup> <https://iucnuk.files.wordpress.com/2018/03/soc-national-scenic-areas.pdf>

<sup>iii</sup> Countryside Commission for Scotland. 1978. *Scotland’s scenic heritage*. CCS Battleby.

<sup>iv</sup> <https://www.nature.scot/snhs-commissioned-report-29-overview-scotlands-national-programme-landscape-character-assessment>

<sup>v</sup> <https://www.nature.scot/sites/default/files/2018-10/Guidance%20-%20National%20Scenic%20areas%20-%20Identifying%20special%20qualities%20of%20Scotlands%20NSAs.pdf>

<sup>vi</sup> <http://rogercrofts.net/files/agriculture/Scotlands%20land%20future%20agenda.pdf>

<sup>vii</sup> <https://consult.gov.scot/environment-forestry/environment-strategy/>

<sup>viii</sup> <https://www.fightforscotlandsnature.scot/>

<sup>ix</sup> RSE Advice Note *Brexit and the Environment* to be published w/b 19/11/18