

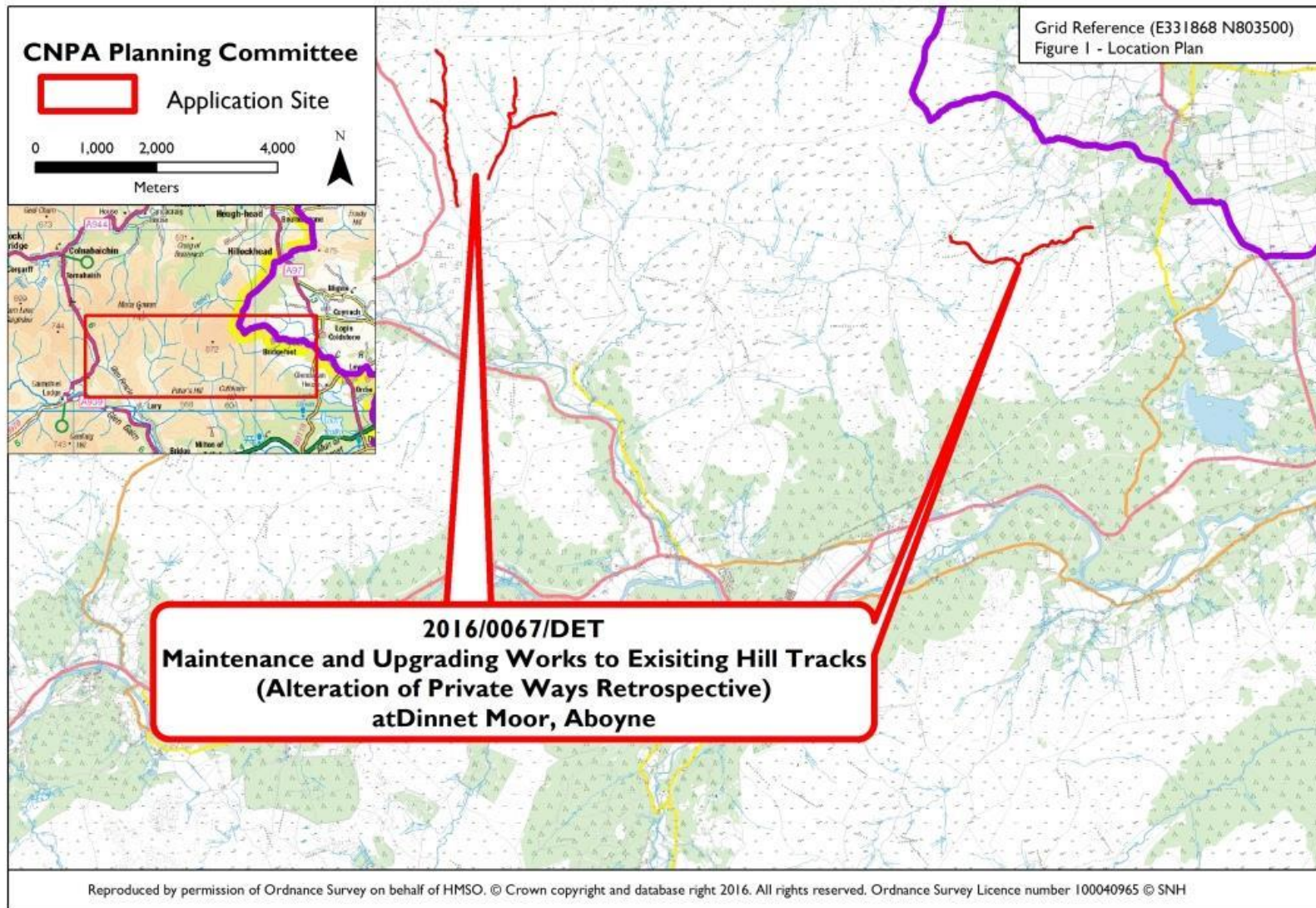
---

**CAIRNGORMS NATIONAL PARK AUTHORITY**

---

<b>DEVELOPMENT PROPOSED:</b>	
Maintenance and Upgrading Works to Existing Hill Tracks (Part Retrospective)	
<b>REFERENCE:</b>	2016/0067/DET
<b>APPLICANT:</b>	Findrack Investments Ltd
<b>DATE CALLED-IN:</b>	21 March 2016
<b>RECOMMENDATION:</b>	APPROVE SUBJECT TO CONDITIONS
<b>CASE OFFICER:</b>	Matthew Taylor, Planning Officer

---



## SITE DESCRIPTION, PROPOSAL AND HISTORY

### Site Description

1. The track sections subject to this planning application form part of a larger network of private ways (to be referred to as 'hill tracks') within the Dinnet Estate. The estate is located North of Ballater, comprising open moorland, some woodland to the lower ground, and small plantations such as 'The Tom' to the higher ground. The landform ranges in elevation from 136m up to 871m on Morven.
2. The documentation submitted with this application states there are approximately 27km of tracks on Dinnet Moor. CNPA observations suggest there are closer to 38km of track network within the estate. Two of the three track sections detailed in this application are located to the western part of the estate near Glenfenzie (track section 1 and 2) with the third track section located to the eastern part of the estate providing access from Redburn (track section 6). The location of the estate, track sections and land cover distribution is shown on the OS plan attached as **Appendix I** to this report.
3. The Dinnet Estate contains land protected under a number of statutory designations, being the Morven and Mullachdubh SAC and SSSI, River Dee SAC, and Muir of Dinnet SSSI, shown in **Appendix 4** to this report
4. The estate is also bounded by and visible from key transport routes within the National Park, being the A939, A93 and A97, and is intersected by popular recreational walking and cycling routes.

### Proposal

5. The drawings and documents associated with this application are listed on the next page and are available on the Cairngorms National Park Authority website unless noted otherwise:

<http://www.eplanningcnpa.co.uk/online-applications/#searchApplications>

Title	Drawing Number	Date on Plan	Date Received
Planning Application Drawing	2016-031/PO1	4/03/2016	21/03/2016
Designated Species Report		14/01/2016	21/03/2016
Method Statement		2/03/2016	21/03/2016
Emergency Pollution Prevention Plan		20/06/2016	20/06/2016
Method Statement		20/06/2016	20/06/2016

Glenfenzie – TomDubh – Moine Allt Duisgan – Section 1			
Method Statement Glenfenzie – Sron Gharbh – Morven Lodge – Section 2		20/06/2016	20/06/2016
Method Statement Roar Hill – Redburn – Section 6		20/06/2016	20/06/2016

6. The applicant seeks full planning permission to retrospectively authorise the part completed alterations that have been made to track sections 1, 2 and 6 and to allow for further alterations to complete and mitigate for the environmental impacts from those works. The combined length of these track sections is 7.5km. The submitted method statements refer to re-engineering some sections of road, repairing others and top dressing other sections.
  
7. The proposed specification and methodology for the required mitigation is described in the 3 revised documents “Method statement for mitigation and remedial works for tracks on Dinnet Moor” and includes an “Emergency Pollution Prevention Plan” which are attached as **Appendix 2** to this report. This revised information was received by the CNPA on 20<sup>th</sup> June 2016. The documents describe the current condition of the track sections, source of materials from existing borrow pits, and the proposed works to mitigate for the environmental impacts by stabilising the track sections in order to prevent erosion as a result of poor drainage and surfacing.
  
8. Importantly it should be noted that the original Method Statement provided in support of the retrospective planning application was not informed by site inspection “due to the recent weather and snow cover across the site in question”. However, the revised documents, received 20 June 2016, now provide for track section specific construction/alteration details with photographs confirming that a site appraisal has been undertaken.

## **History**

9. The works to the hill track network within the Dinnet Estate have been subject to CNPA investigation for planning compliance. The following paragraphs provide a summary of the key events leading to the submission of this retrospective planning application and the efforts made to seek a resolution.
  
10. In August 2013 the CNPA was made aware of potentially unauthorised works on hill tracks within the Dinnet Estate. The CNPA Planning Monitoring & Enforcement Officer undertook site inspections confirming that works to the private ways had occurred. The works comprised the creation and/or alteration of tracks and borrow pits and are considered to be significant and highly visible.

The CNPA took a large number of photographs of the works for record and received additional photographs from a member of the public.

11. The Planning Monitoring & Enforcement Officer wrote to the estate advising them of what appeared to be a breach of planning control and unauthorised development. The CNPA planning service expressed the view that the works appeared to have been undertaken by the sporting tenant for the purpose of improving 'sporting' access and therefore, whilst there may be argued a secondary agricultural benefit, would not have qualified for permitted development rights that existed at the time.
12. Following legal advice the CNPA served a number of Planning Contravention Notices (PCNs) requiring the owner of the estate and others with an interest in the land to submit information for consideration within 21 days.
13. The new estate factor at the time of the PCN wrote to say that the works were undertaken using permitted development allowances for agricultural developments and that all further works were to be suspended. The PCNs provided detail of the agricultural unit and sporting tenancy, confirming that works were undertaken by the sporting tenant but with an agricultural benefit being claimed for the agricultural unit.
14. The CNPA undertook further visits with specialist landscape and land management advisors to determine the full extent of the works.
15. Further discussions with the estate and tenant took place. The estate claimed that the works were completed before the December 2014 changes to the regulations that introduced the requirement for Prior Notification/Prior Approval for agricultural and forestry private ways so were agricultural permitted development at the time of the works. It should also be noted that new tracks or upgraded tracks or private ways for 'sporting' have always required applications for planning permission.
16. The estate had not sought a screening opinion under the EIA regulations. In the CNPA's view, the works associated with the whole track network of new and modified tracks that were inspected would have been subject to EIA due to the extent of the works (over a distance of 17km) and the significant landscape impacts within the National Park. It was also noted that parts of the whole network fall within designated SAC and SSSIs. Therefore, as the works would have required EIA they would not have qualified for Permitted Development allowances.
17. In May 2015 the CNPA had met with estate representatives to discuss a way forward with the desired outcome to remedy the environmental harm that had been caused. It was agreed that the Planning Monitoring & Enforcement Officer and Landscape Advisor would meet on site with estate staff to further survey and assess the track works, to identify the mitigation requirements and consider the appropriate mechanism to regularise the developments. The CNPA reserved the right to use enforcement powers should the developer not co-operate voluntarily.

18. At this stage, the estate indicated that they wished to continue the works without a requirement to document their completed operations or the methods to achieve the required mitigation. The CNPA reminded the estate that all future works would be subject to a requirement for at least Prior Approval and would require to be documented in any event if they are to be applied for or retrospectively authorised.
19. The CNPA's Planning, Enforcement, and Landscape Officers undertook extensive site surveys over 2 days in July 2015. The survey work enabled the mapping and categorisation of tracks with detailed mitigation/remediation works being identified at more specific section level. The tracks sections were categorised into those which required urgent mitigation, those which required some mitigation and those that needed no mitigation. This also allowed officers to consider both the impacts of the development, mitigation required and the potential routes to regularise the works as far as practicable and in the public interest, at the same time as offering a pragmatic solution to the applicant.
20. Although the recent works to the track network are unauthorised, officers came to the conclusion that with the cooperation of the estate, a compromise could be reached to focus on the most significant issues. Of the 38km of track surveyed, 22km require no additional works to mitigate and are of an acceptable construction standard. However, 16km are more significant in terms of environmental impact and require planning applications (for the most significant works) or Prior Approval for additional works to mitigate the development.
21. Officers gave the applicant clear options for appropriate applications or notifications together with the CNPA's survey mapping of the network and detailed mitigation and remediation recommendations from the CNPA Landscape Advisor. The applicant was clearly told that they would need specialist design input to identify and provide the practical solutions required to achieve the mitigation standards that would be required with any planning applications. They were also given a realistic timetable for the submission of applications. The CNPA provided two extensions of time to the applicant at their request and the current planning application was called in on the 21<sup>st</sup> March, two months after the original deadline for submission.
22. The current planning application relates to 7.5km of modified existing track where retrospective permission is sought to authorise the recent works and permit the further detailed mitigation works to secure an acceptable standard of development on the ground. The CNPA consider it essential that the actual and proposed works are fully considered and documented to inform the engineering operations. These sections of track are at risk of significant deterioration without early intervention.
23. There are further sections of new track on the estate, not included in current planning application, that will require retrospective planning applications to be consented in order to become authorised. These tracks sections do not appear to be modified from existing tracks despite the estate's assertions that all works are to 'pre-existing tracks'. This has been highlighted by SNH as part of discussions with the CNPA, and the North East Mountain Trust in

correspondence to Aberdeenshire Council. However, the construction of these new sections of track has not created such severe environmental impacts as the modified sections.

24. There are also sections of track that require less mitigation and will require Prior Approval for mitigation works. The CNPA has already responded to Prior Notifications received by Aberdeenshire Council in March 2016. The applicant has been reminded that Prior Approvals do not retrospectively authorise works already completed, but are an opportunity to properly manage the works necessary to get the tracks to a suitable standard.
25. As Members are aware, further to the cleared reporting of the retrospective planning application to the Planning Committee in June 2016 with a recommendation for refusal (attached as **Appendix 6**), the agent for the applicant had provided an additional late submission with further detail of the proposed mitigation works. In order that this could be properly considered and to provide a further final opportunity for the necessary details to be secured, the consideration of the determination of the planning application was deferred to the July Planning committee.

## **DEVELOPMENT PLAN CONTEXT**

### **Policies**

<b>National Policy</b>	Scottish Planning Policy 2014	
<b>Strategic Policy</b>	Cairngorms National Park Partnership Plan 2012 - 2017	
<b>Local Plan Policy</b>	Cairngorms National Park Local Development Plan (2015) Those policies relevant to the assessment of this application are marked with a cross	
POLICY 1	NEW HOUSING DEVELOPMENT	
POLICY 2	SUPPORTING ECONOMIC GROWTH	
POLICY 3	SUSTAINABLE DESIGN	X
POLICY 4	NATURAL HERITAGE	X
POLICY 5	LANDSCAPE	X
POLICY 6	THE SITING AND DESIGN OF DIGITAL COMMUNICATIONS EQUIPMENT	
POLICY 7	RENEWABLE ENERGY	
POLICY 8	SPORT AND RECREATION	
POLICY 9	CULTURAL HERITAGE	
POLICY 10	RESOURCES	X
POLICY 11	DEVELOPER CONTRIBUTIONS	

26. All new development proposals require to be assessed in relation to policies contained in the adopted Local Development Plan. The full wording of policies can be found at:

<http://cairngorms.co.uk/uploads/documents/Park%20Authority/Planning/LDPI5.pdf>

## Planning Guidance

27. Supplementary guidance also forms part of the Local Development Plan and provides more details about how to comply with the policies. Guidance that is relevant to this application is marked with a cross.

Policy 1	New Housing Development Non-Statutory Guidance	
Policy 2	Supporting Economic Growth Non-Statutory Guidance	
Policy 3	Sustainable Design Non-Statutory Guidance	X
Policy 4	Natural Heritage Supplementary Guidance	X
Policy 5	Landscape Non-Statutory Guidance	X
Policy 7	Renewable Energy Supplementary Guidance	
Policy 8	Sport and Recreation Non-Statutory Guidance	
Policy 9	Cultural Heritage Non-Statutory Guidance	
Policy 10	Resources Non-Statutory Guidance	X
Policy 11	Developer Contributions Supplementary Guidance	

## CONSULTATIONS

28. A summary of the main issues raised by consultees now follows:
29. **SNH** (who under a protocol with the CNPA, do not provide advice on Landscape matters in the National Park) considers that the proposal could be progressed with appropriate mitigation. However, because it could affect international important heritage interests, they **object** to the proposal unless it is made subject to conditions so that the works are done in accordance with construction method statement detailing measures to minimise pollution and sedimentation to the nearby sites. SNH also state that the CNPA are required to consider the effect of the proposal on the River Dee and Muir of Dinnet SAC before it can be consented by undertaking a Habitats Regulations Appraisal.
30. SNH consider that the proposal has the potential to generate significant quantities of silt which could enter the Glenfenzie and Red Burns and thereby the River Dee Sac and the Muir of Dinnet SAC at Loch Davan. Designated species namely salmon and freshwater pearl mussels, and the clearwater loch habitat at Loch Davan, are susceptible to the effects of siltation. In the view of SNH the proposal is likely to have a significant effect on those interests. Consequently an appropriate assessment is required.
31. However, SNH consider that if the proposal is undertaken strictly in accordance with a construction method statement, that outlines the site specific measures necessary to minimise the risk of pollution and run off during construction work, it may no longer be likely to have a significant effect and an appropriate assessment will no longer be required.



32. In respect of borrow pits within Muir of Dinnet and Morven and Mullachdubh SSSIs whilst the method statement refers to borrow pits there is no information to state whether these are subject of the planning application and therefore to be used. Works to borrow pits within the SSSIs may require consent from SNH.
33. In respect of the Muir of Dinnet SSSI and its geomorphologic interest, SNH note that the original track cuts across a number of sub glacial ridge and channel features, with the recent upgrading of the track causing additional damage which cannot be restored and has increased visual intrusion. The proposed mitigation should benefit the geomorphologic interest by visually reducing the interruption to the landforms.
34. The **Ballater and Crathie Community Council** has been consulted but has not responded to date.
35. **CNPA Landscape Adviser** describes the landscape character of the area and that tracks are a feature of these landscapes but they can impact significantly on the special landscape qualities of the extensive moorland. Parts of the area are well-walked by the public and used by cyclists with parts of sections 1 and 6 of the tracks being highly visible from the public road network.
36. The landscape and visual impacts from the development are as follows:
  - a) Track Section 1 – harsh linear features in the landscape tracking up the nose of the ridge and are very visible from the A939.
  - b) Track Section 2 – owing to their steepness, poor drainage, over steepened cut peat faces, side cast and poorly restored materials these tracks have become pronounced scars in the landscape, affecting the character and experience of this part of the National Park.
  - c) Track Section 6 – The light colour of the stone here combined with ongoing erosion on these steep slopes mean that this track is a highly visible scar in the landscape from the Howe of Cromar and beyond.
37. The landscape advisor considers that these sections of track have a significant landscape and visual impact at present. The original submitted method statement contained some good general guidance but sections 2 and 6 in particular present some key challenges which can only be overcome with careful attention to detail. More site specific information was required in respect of drainage, construction and restoration. More detail was required on the siting of drainage features, for example more water bars might be necessary on steeper slopes to reduce the likelihood of scouring.
38. The landscape advisor considers that the revised Construction Method Statements (20 June 2016) offer more specific information for each track section and it is now apparent that a site inspection has been completed. The revised section specific CMS' now provide:
  - a) Track Section 1 – Specific details focussing on re-vegetation to reduce impact.

- b) Track Section 2 – Further site specific construction information. However, a little bit more information needs to be supplied specifying exactly how the steep embankment on the east spur of this section will be ‘reduced’ and exactly how it will be re-vegetated.
  - c) Track Section 6 – Further site specific construction information in the form of photographs of key problem areas, annotated cross section drawings/method statements illustrating/describing the proposed drainage and construction solutions for these problem areas including site specific approaches to vegetation restoration.
39. The sources of borrow for the works and proposals for the restoration of these areas post extraction of materials is now identified.
40. An emergency pollution prevention plan is now available detailing methods which will be undertaken to prevent any pollution incident in the watercourses.
41. The CNPA landscape advisor recommends that there is a condition requiring an experienced Landscape Clerk of Works (LCoW) to be on site regularly during the implementation of these works. This is recommended daily for Sections 2 and 6 and every 2 days for section 1. Weekly annotated photographic reports to be submitted by the LCoW to CNPA and the applicant.
42. The **CNPA Ecology Adviser** refers to the nearby environmental designations and their qualifying interests. The potential impacts during construction are discussed, including the potential to spread Juniper Dieback fungus through the movement of materials, the loss of vegetation including upland heath Annex 1 priority habitat and further degradation adjacent to tracks, with opportunity for micro-siting vegetation being available. Silt generation has the potential to reach watercourses and pollute gravels required for spawning salmon and freshwater pearly mussels. Reference is also made to nearby habitat supporting Northern February Red Stonefly and the risk from sedimentation. Additionally breeding birds should not be disturbed. It is considered that the impact on otter and water vole would be negligible.
43. The ecology advisor made reference to the drainage solutions which have been described in the original ‘Method statement’ but there were no site specific details. Site specific siting of culverts, drainage ditches and water bars have the potential to reduce the likelihood of erosion that generates silt and sediment, for example more water bars on steeper sections. Details were not provided.
44. An Ecological Clerk of Works should be present on site during upgrading works to ensure that every opportunity is taken for successful habitat restoration and there is not significant disturbance to rare species.
45. In response to the requirement to undertake a HRA, the development has the potential to negatively impact through construction and on-going activity on populations of qualifying interests of the SAC which are Otter, Atlantic Salmon and Freshwater Pearl Mussel. These are all dependant on clear flowing, well oxygenated water. At the time of the original submission the CNPA could not

conclude that the development would not have a significant effect on the designated features of these European designated sites without more site specific information within a construction method statement and details of finished track elevation, camber and drainage solutions to ensure that there will be no short or long term impacts during construction and operation.

46. Further to the submission of revised CMS received 20 June 2016, the CNPA ecologist has undertaken a review of this new information and completed a new Habitats Regulations Assessment under regulation 48 of the Conservation (Natural Habitats, &c.) Regulations 1994 (as amended).
47. The assessment, based upon the best available scientific evidence and advice offered from SNH and others has shown that with additional mitigation measure of a 'Pollution Prevention Plan' which should be produced and agreed by the CNPA prior to any works being undertaken on site, it is concluded that there will be no adverse effect on the integrity of the River Dee and Muir of Dinnet SACs.
48. The **CNPA Outdoor Access Officer** considers that the development would have minor impact on outdoor access, but has the potential to be addressed by appropriate mitigation measures. This would include details on location of the works and site signage to give the public sufficient warning about the works to enable them to choose another route.

## REPRESENTATIONS

49. The application was advertised and no comments have been received.

## APPRAISAL

### Principle of Development

50. Subject to the extent, specific site location, design and means of construction, the principle of the formation or alteration of hill tracks over the Dinnet Estate is acceptable. Hill tracks provide access for agricultural, forestry and sporting purposes whilst also providing access to land for walkers and cyclists.
51. In this case, as the hill track developments as a whole should have been subject to Environmental Impact Assessment, they did not benefit from permitted development allowances both prior to, and following, the Scottish Government amendments to the regulations in late 2014. Because of this, full planning applications are required to retrospectively authorise the track modifications and to approve the further works that are required.
52. It should be noted that each planning application must be contained to less than 8km in length to qualify as 'local' development under the planning hierarchy. In this instance and in anticipation of the co-operation of the applicant, the subdivision of the track network into smaller sections as part of the various

submissions was considered the most pragmatic way forward to secure the necessary standards on the ground as quickly as is possible.

53. The submitted planning application is assessed against the Cairngorms National Park Local Development Plan 2015 (CNP LDP) with other material considerations, namely SPP, informing the assessment.

### **Landscape and Visual Impacts**

54. The estate is located to the north of Ballater and is bounded by and visible from key transport routes within the National Park, being the A939, A93 and A97. The estate is also intersected by popular recreational walking and cycling routes.
55. The landscape character of this area is described in the North Eastern Hills Section of the Cairngorms National Park Landscape Character Assessment (2009). Tracks are a feature of this landscape but they can impact significantly on the special landscape qualities of the extensive moorland. Understandably minimising the landscape and visual impact from such track works is crucial in maintaining the landscape character and ensuring the public experience of the Park is not compromised.
56. The diverse and spectacular landscapes are one of the Park's key assets and the distinctive character of the landscape is one of the reasons for the creation of the Park. Policy 5: Landscape of the CNP LDP 2015 states that there will be a presumption against any development that does not conserve and enhance the landscape character and special qualities of the Cairngorms National Park including wildness, and in particular, the setting of the development.
57. In order to avoid unacceptable landscape impacts, all developments must be designed to complement their setting. Policy 3: Sustainable Design of the CNP LDP 2015 requires that a design statement accompany all development proposals to demonstrate how the proposal has been designed to use materials and landscaping that will complement the setting of the development.
58. The planning application was originally submitted with a single 'Method statement for mitigation and remedial works for tracks on Dinnet Moor' written by Highland Conservation Ltd on behalf of Findrack (Investments) Ltd. This document refers to track 'maintenance' works and was produced to address planning authority concerns. It is considered that the continued reference to 'maintenance' works is misleading and downplays the environmental impacts arising from the development.
59. In response to the cleared planning report recommending refusal of permission and authorisation of enforcement action in June 2016, the applicant had provided further details as a late submission which required to be fully considered and assessed. Members agreed to defer the determination and a further and final opportunity was provided the applicant to address some of the concerns of the CNPA and consultees, and to demonstrate that the works are capable of securing a favourable outcome following HRA.

60. It is clear from the site surveys undertaken by the CNPA Officers that the works undertaken, include significant engineering operations with some widening and re-alignment of, for the most part, pre-existing track routes, constitute 'alterations' to the hill tracks, with other sections not forming part of this application being considered as 'formation' of new tracks. A small selection of photographs taken of the hill track network during the CNPA surveys in July 2015 are attached as **Appendix 3** and serve to illustrate the visual presence of the track works. The photographs are consistent with those now provided by the applicant as part of the revised Construction Method Statements, which serve to demonstrate that a site appraisal has now been undertaken to inform the works.
61. The revised method statements confirm that section specific observations have informed the proposed design methodology, and as such the document contains some good general detail with the added section-specific references to demonstrate an awareness of the issues, and recognition of the measures needed to mitigate the impacts. It should be noted that as part of the CNPA investigation of the works a full survey of the track network was undertaken by CNPA officers with section specific mitigation and remediation requirements being provided to the applicant. The revised CMS is now consistent with the CNPA advice and confirms close containment of the works, which for the most part are contained within the track margins. Material is also to be sourced locally to the track sections from drainage ditching and local borrow pits. It is proposed that the borrow pits be landscaped and turfed at the end of use.
62. It should be noted that the success of the mitigation is heavily dependent on specialist advice and the use of experienced contractors who would be required to walk the route making reference to the mitigation/remediation standards that are identified, and working to the detailed section specific construction method statements and the required pollution prevention plan. Officers are pleased to see that the statements now include photographs, sections, and a more detailed methodology and explicit reference to the need for a detailed pollution prevention plan prior to construction.
63. Having considered the further submission and revised detail, the CNPA Landscape Advisor is content that the works could be appropriately mitigated in respect of drainage, construction and restoration. However, more detail is required on the proposed slope reduction on the spur of Section 2. It is recognised that this may be more confidently detailed with input from an experienced contractor/operator and submitted for final confirmation at that time as part of a schedule of works to be agreed by the CNPA.
64. Therefore, it is considered that the method statement provides some general guidance and good practice reference, and more properly demonstrates that the works required to mitigate the environmental impacts have been identified and can be delivered by appropriately skilled contractors overseen by a Landscape Clerk of Works and monitored by the CNPA.

65. The proposals, being subject to a requirement for Landscape Clerk of Works and regular monitoring of progress, and with the final design of slope reduction to section 2 to be agreed, comply with Policy 3: Sustainable Design and Policy 5: Landscape of the Cairngorms National Park Local Development Plan 2015.

### **Other Environmental Impacts**

66. The Dinnet Estate accommodates land protected under a number of designations as outlined in paragraph 3 of this report and also shown on **Appendix 4**.
67. Policy 4: Natural Heritage of the CNP LDP 2015 states that development likely to have a significant effect on a Natura 2000 site must demonstrate no adverse effect on the integrity of the site. The CNPA must decide if an aspect of the project is likely to have a significant effect on a Natura site as a screening stage in Habitat Regulations Appraisal.
68. SNH consider that the proposal has the potential to generate significant quantities of silt which could enter the Glenfenzie and Red Burns and thereby the River Dee Special Area of Conservation (SAC) and the Muir of Dinnet SAC at Loch Davan. Salmon, freshwater pearl mussels, and the clearwater loch habitat at Loch Davan are susceptible to the effects of siltation. In the view of SNH the proposal is likely to have a significant effect on those interests. Consequently an appropriate assessment is required. Notwithstanding this SNH consider that the development could be progressed with appropriate site specific mitigation that would require to be provided before development is commenced.
69. In response to the revised Construction Method Statements and Emergency Pollution Prevention Measures (PPP) (received 20<sup>th</sup> June 2016), the CNPA ecology advisor welcomes site specific siting of culverts, drainage ditches and water bars as having the potential to reduce the likelihood of erosion that generates silt and sediment and the explicit reference to the need for a pollution prevention plan. However, whilst the PPP makes reference to the protection of watercourses from sedimentation, further detail, including annotation on plan is required.
70. A new screening for Habitats Regulations Assessment has been completed. Whilst the development has the potential to negatively impact through construction and on-going activity on populations of designated features of the River Dee and Muir of Dinnet SAC (Otter, Atlantic Salmon and Freshwater Pearl Mussel), which are all dependant on clear flowing, well oxygenated water; with the construction method statements and identified 'Pollution Prevention Plan' it can be concluded that there will be no adverse effect on the integrity of these sites.
71. CNPA has consulted SNH on the HRA. A response from SNH was not available at the time of report writing, but can be confirmed at Planning Committee.

72. Policy 10: Resources of the CNP LDP 2015 requires that all developments do not result in the deterioration of the current or potential ecological status of water resources or their amenity or recreation value. Developments must demonstrate any impacts (on the water environment) can be adequately mitigated. In this instance, the revised submissions have identified section specific drainage and surfacing measures and confirmed the need to produce a detailed pollution prevention plan for use during the construction and repair period
73. In addition to the main concerns over sedimentation of the SAC both during and post construction, SNH and CNPA ecologists make reference to ornithological interests and the need to avoid disturbance during breeding seasons. As the works are for the most part contained within the track margins, with limited encroachment outwith for pollution prevention or sourcing of borrowed turfs, then a walkover check for birds should be sufficient.
74. The submitted CMS refers to the use of local turfs for the lining of ditches and track margins and the local source of materials. Therefore, the potential for a transfer of juniper die back fungus and the loss of heathland is negligible.
75. It is considered the development, being subject to planning conditions securing further pollution prevention measures and controlling movement outwith the track area, complies with Policy 4: Natural Heritage and Policy 10: Resources of the Cairngorms National Park Local Development Plan 2015.
76. The planning application, with further information to be secured by planning condition, contains sufficient information to demonstrate compliance with the relevant provisions and intent of the Cairngorms National Park Local Development Plan 2015 Policies 3, 4, 5 and 10 and there are no other material considerations that would warrant the setting aside of adopted policy.

## **CONCLUSION**

77. The planning application now contains sufficient information to determine that the landscape and visual impacts arising from the unauthorised development are to be suitably mitigated for and remedied, and that the future works will achieve an acceptable level of mitigation without further detrimental impacts.
78. Furthermore, there is sufficient information to determine that the development, adhering to the Construction Method Statements and detailed Pollution Prevention Measures, will not have a significant adverse impact, both during and post construction, upon the qualifying interests of the nearby Special Areas of Conservation, and appropriate steps are to be taken to avoid loss and impacts upon habitat and species such as vegetation and ground nesting birds.

## **Enforcement Action**

79. Members are aware that the planning application is in part retrospective and it has taken a considerable amount of time to secure the necessary details to

demonstrate compliance with adopted policy. Whilst the approval of planning permission for the track works provides certainty, the delivery of the identified standards will rely heavily on the co-operation of the applicant, and it is prudent for the works to be implemented as soon as possible to avoid any further degradation of the track conditions and worsening of the landscape and visual, and environmental impacts.

80. Members are asked to delegate any necessary enforcement action to officers, in liaison with the Planning Committee Convenor, in the event that the applicant does not provide for an acceptable schedule for mitigation or is in breach of the terms of this permission. This is in order to remedy any harm caused by the tracks subject to this application, as well as the wider unauthorised track network within the Dinnet Estate as soon as practicable.

## RECOMMENDATION

**That Members of the Committee support a recommendation to: APPROVE FULL PLANNING PERMISSION for Maintenance and Upgrading Works to Existing Hill Tracks (retrospective) At Land at Dinnet Moor, Dinnet, Aboyne and DELEGATE ENFORCEMENT ACTION to officers in the event that the developer breaches the terms of this planning permission.**

Those conditions listed below in bold text are suspensive conditions, which require to be discharged prior to implementation of the development.

1. **No development shall commence on site until a detailed Pollution Prevention Plan, including map annotation for the siting of sediment traps, is submitted to and approved in writing by the Cairngorms National Park Authority acting as Planning Authority in consultation with SNH and SEPA and must detail site specific measures necessary to minimise the risk of pollution and run-off during construction works. A Pollution Prevention Plan which provides adequate detailed measures to ensure no pollution takes place shall be submitted within 3 months of the date of this permission.**

**Thereafter the development shall be implemented in accordance with those approved details unless otherwise agreed in writing by the Cairngorms National Park Authority acting as Planning Authority.**

**Reason: To ensure the development safeguards the environment, and protects habitats and species in accordance with Policy 3: Sustainable Design and Policy 4: Natural Heritage.**

2. **No development shall commence on site until a schedule for the delivery of the approved works clearly identifying the sections of track to be worked on at each phase of development, and a timescale for their delivery is submitted to and approved in writing by the Cairngorms National Park Authority acting as Planning Authority.**



**The Delivery Schedule, which shall demonstrate the earliest possible implementation of all the works hereby approved, shall be submitted within 3 months of the date of this permission.**

**Thereafter the development shall be implemented in accordance with those approved details unless otherwise agreed in writing by the Cairngorms National Park Authority acting as Planning Authority.**

**Reason: To ensure the development is completed in a logical manner by focussing first on those sections of track with the greatest potential for accelerated degradation and erosion as a result of rainfall and extreme weather events. In accordance with Policy 3: Sustainable Design, Policy 4: Natural Heritage and Policy 5: Landscape of the Cairngorms National Park Local Development Plan 2015.**

- 3. No development shall commence until a Landscape Clerk of Works (LCOW) has been appointed by the developer who shall thereafter oversee the completion of the works in accordance with the approved Construction Method Statements and Pollution Prevention Plan (to be approved under Condition 1) during the construction phases of the development hereby approved.**

**Prior to appointing the LCOW, the name and contact details including the qualifications and experience of the LCoW shall first be submitted as part of a 'scope of works' for that person which must be submitted to, and approved in writing by the Cairngorms National Park Authority acting as Planning Authority. The scope of works shall include the method and frequency of the regular reporting of progress on the works to the Cairngorms National Park Authority acting as Planning Authority. A Scope of Works, which demonstrates the competent overseeing of works, shall be submitted within 3 months of the date of this permission.**

**Reason: To ensure the development complements and enhances the landscape character, protects habitats and species, and reduces its environmental impact in accordance with Policy 3: Sustainable Design, Policy 4: Natural Heritage and Policy 5: Landscape of the Cairngorms National Park Local Development Plan 2015.**

- 4. No development or movement beyond the track margins and borrow pit areas shall commence until a pre-construction walkover survey for breeding birds is completed. Should breeding birds be identified in the area of the proposed works then an alternative route for access or schedule for works shall be considered and documented for CNPA approval, and must be submitted to and approved in writing by the CNPA in advance of the alternative approach to development.**

**Reason: To ensure the development has no adverse impact on protected species in accordance with Policy 4: Natural Heritage of the Cairngorms National Park Local Development Plan 2015.**

5. **Notwithstanding the approved plans and details, no development shall commence until a detailed outdoor access statement is submitted to and approved in writing by the Cairngorms National Park Authority acting as planning authority. The statement must refer to all public access routes that would be affected by the proposal and must include details of measures to maintain public access during construction and inform members of the public of the works and likely period of disturbance together with details of alternative routes. The outdoor access statement shall be submitted within 3 months of the date of this permission.**

**Thereafter the development shall proceed in accordance with the approved detail unless otherwise agreed in writing by the Cairngorms National Park Authority.**

**Reason: To ensure the development does not restrict public access in accordance with the relevant provisions of Policy 3: Sustainable Design of the Cairngorms National Park Local Development Plan 2015.**

#### **Informatives:**

1. In accordance with section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended), this permission lapses on the expiration of a period of three years beginning with the date on which this permission is granted unless the development to which this permission relates is begun before that expiration.
2. Prior to the commencement of development, a notice of the intended date of initiation of development shall be submitted to the CNPA acting as Planning Authority and such notification shall contain the information set out in the 'Notification of Initiation of Development Notice as appended, pursuant to Section 27A(1) of the Town and Country Planning (Scotland) Act 1997.
3. Following the completion of the development, a notification of the completion shall, as soon as practicable, be submitted to the CNPA acting as Planning Authority and such notification shall contain the information as set out in the 'Notification of Completion of Development' Notice as appended, pursuant to Section 27B(1) of the Town and Country Planning (Scotland) Act 1997.
4. The developer may require separate permissions from Scottish Natural Heritage and should contact them in the first instance to confirm any requirements.

The map on the first page of this report has been produced to aid in the statutory process of dealing with planning applications. The map is to help identify the site and its surroundings and to aid Planning Officers, Committee Members and the Public in the determination of the proposal. Maps shown in the Planning Committee Report can only be used for the purposes of the Planning Committee. Any other use risks infringing Crown Copyright and may lead to prosecution or civil proceedings. Maps produced within this Planning Committee Report can only be reproduced with the express permission of the Cairngorms National Park Authority and other Copyright holders. This permission must be granted in advance.