

Balavil again – the continued proliferation of hill roads and the Prior Notification System

Description



A section of unlawful track work nearing completion. While it appears better than many tracks but there are still serious issues as this post explains.

Parkswatch was sent photos a couple of weeks ago of new road construction on the Balavil Estate. Earlier this year Balavil was granted planted permission by the Cairngorms National Park Authority to construct a controversial new road over into the heart of the Monadhliath Wild Land Area ([see here](#)) and ([here](#)). (Work on that road is now well underway and Parkswatch will report on the end result in due course). This new work was reported to the Cairngorms National Park Authority who have confirmed it had been undertaken without any planning consent.

I have been in touch with the estate this week and am pleased to be able to report back that they:

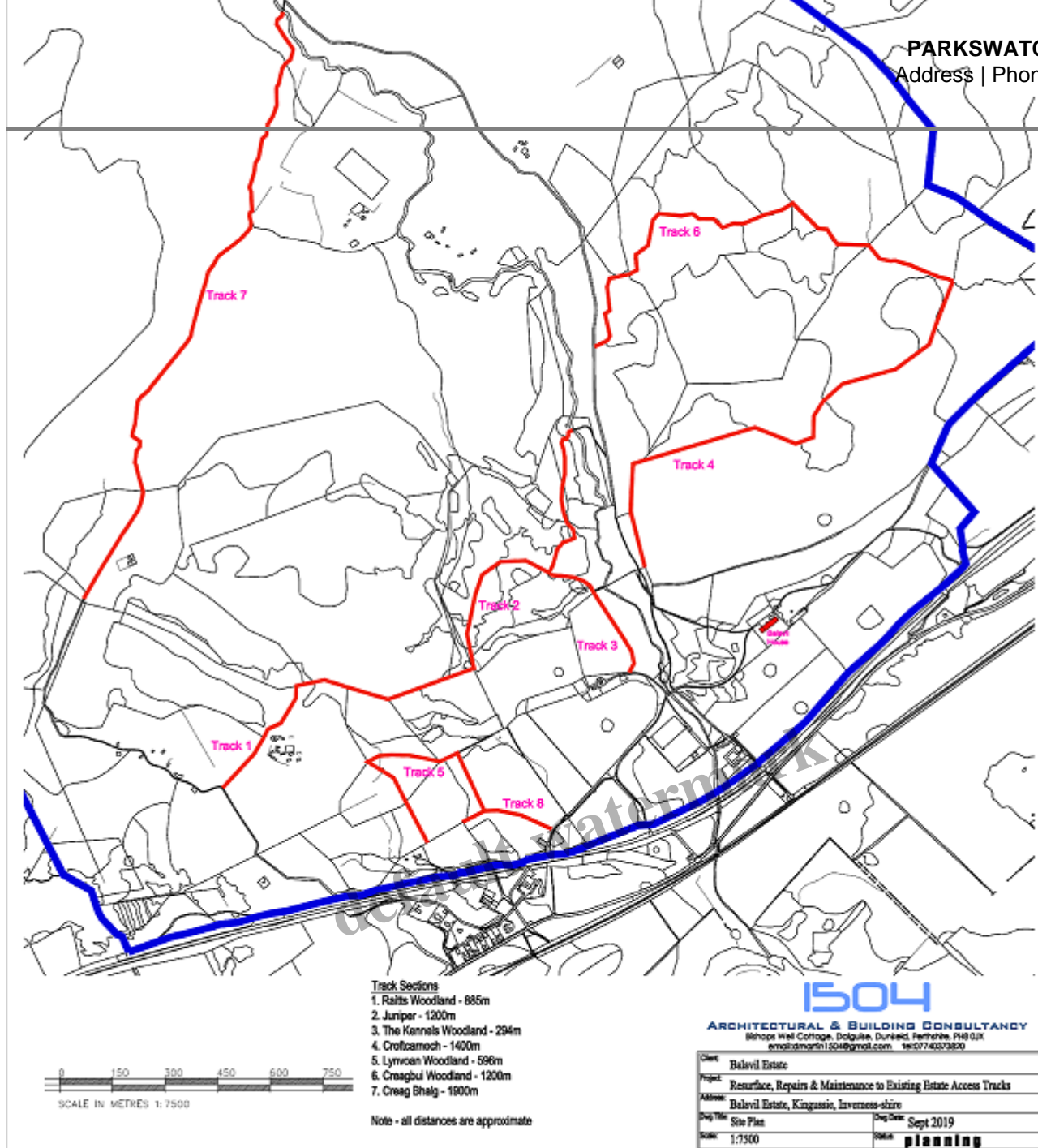
“have ceased all work on the track and have had a site visit with the planners from the CNPA and are working closely with them to resolve the issues.”.

That provides a breathing space – so what are the issues?

New Prior Notification to Highland Council

After ascertaining that the construction of the new road was unlawful, I was notified through the North East Mountain Trust, who monitor all hill track applications in the Cairngorms, that the Balavil Estate had submitted a Prior Notification to Highland Council on Friday 6th September to “upgrade” 7.75 km of track on the estate.

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(For some

reason the notification, Reference19_04036_PNO, had disappeared from the Highland Planning Portal today so I cannot give links. This post is based on the documents I downloaded).

It appears therefore that the estate had been fully aware that they needed to notify Highland Council and through them the Cairngorms National Park Authority of the proposed works for comment but had nevertheless decided to start them anyway. This, I am afraid, is another example of a landed estate flouting the law.

The reason this has happened, I suspect, is that planning law on new roads/tracks is so weak as to be effectively useless. Under the Prior Notification system, while there is a legal duty for the landowner or land manager to notify new agricultural or forestry track work to the Planning Authority, the Planning Authority has NO power to refuse them, as they are still classed as a permitted development. All the Planning Authority can do is require the landowner to seek “prior approval” before works commence – in effect the Planning Authority can influence how tracks are designed but not whether new tracks are constructed. This makes it particularly difficult to enforce the law. As long as a landowner says they are prepared to talk about the design of a track, its very hard for the National Park to do anything under the Prior Notification system.

The key question therefore is whether these proposed track “upgrades” by Balavil do fall under the Prior Notification System.

What are the proposed tracks for?

In the supporting statement for the application, there is a brief statement for each track about its use: four are claimed to be for both forestry and agriculture “*mixed use*”, two just for forestry and one – up onto the grouse moor – just for agriculture.

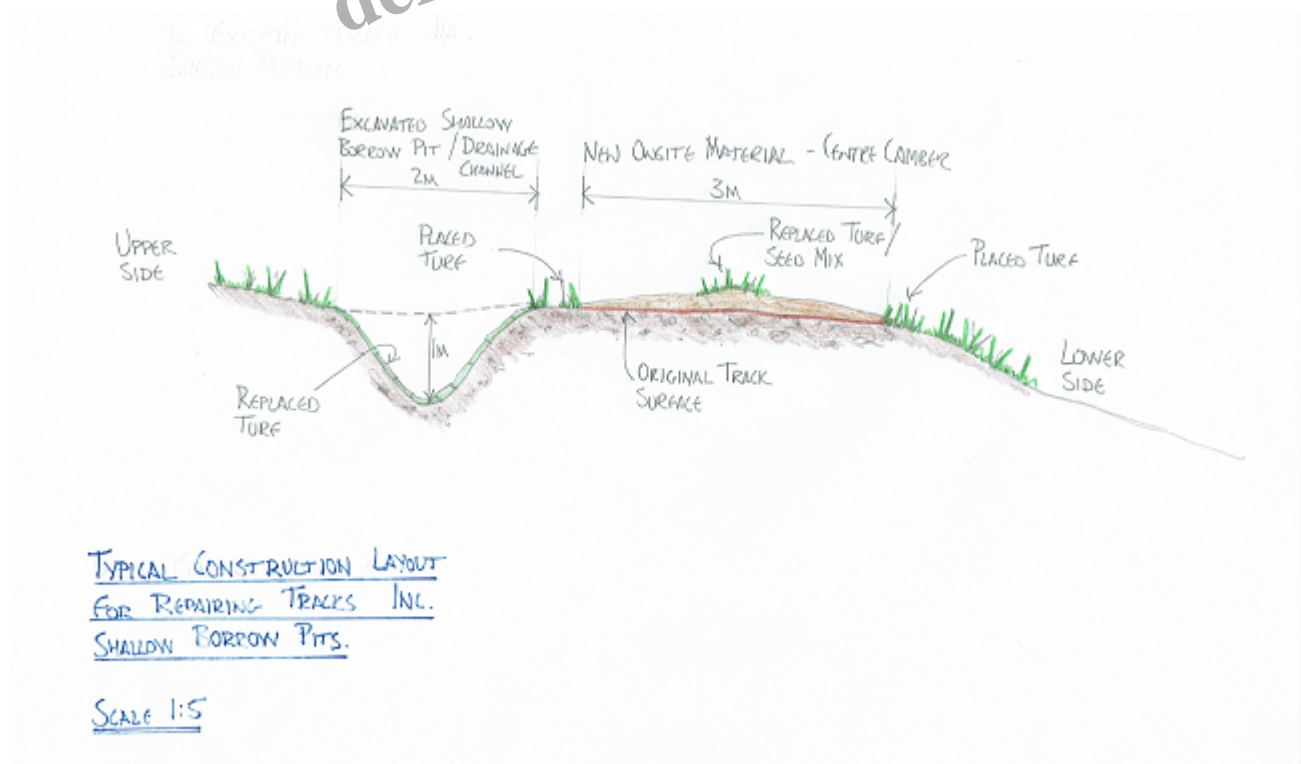
Track 1 – Raitts Woodland

From the west the first 400m or so of this track cuts through an existing grazing field however is way marked as a public right of way for walkers etc, a further access gate then gives access to the main woodland where the track is located on the southern boundary between the tree line and the adjacent fields. The designation of the track appears to have become overgrown somewhat over the years either through lack of use or maintenance. The track then leaves the woodland and tracks easterly through a further grazing field, where it terminates at a further access meeting the entrance to the Juniper track (No2).

Raitts woodland track serves as a mixed use, allowing cattle and other livestock to be transferred between fields and also gives access into the lower wooded areas for woodland management purposes.



What's clear from the photos is that large sections of these tracks don't exist in any meaningful sense of the word at present. The "Construction Details" document describes the work as "repairs":



"typical construction layout for repairing tracks":

That is clearly false. It appears that the estate is proposing significant "upgrades" for most of these

seven routes. That is supported by the evidence for the area where work has started:

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Work which has already started on the tracks 4 – 6 route – prior to this there was no “track” in any meaningful sense of the word, though the route had been used by vehicles

Indeed for many sections of the proposed works, to describe them as upgrades is very misleading:

Track 5 & 8. – Lynvoan Woodland/farm track

The track within Lynvoan woodland serves as a link between the grazing field to the western end of the Raitts woodland track and also further farmland grazing areas directly to the east and south of Lynvoan. Track 8 which adjoins track 5 picks up Lynvoan at its south east corner and allows access through the grazing field back to the main farm access to its south boundary.

This facility allows livestock to be moved between fields without the need to circumnavigate the coniferous woodland. Furthermore the track allows access and egress for the management of the woodland itself in the same manner as kennel woodland.



Access to grazing field from North West corner of woodland

What Balavil appears to be proposing is a significant extension and upgrade to the the road network on the estate. One problem is that under the Prior Notification system as it is at present, whether a track exists or not is irrelevant. There is no distinction between track repairs, track upgrades and new tracks.

Its also not clear, under the Prior Notification system, about what agricultural or forestry use might mean. Within the application, the estate does refer to plans to create new areas of woodland but provides no evidence for this (eg woodland plans) or why new roads are needed for planting trees. Its not difficult to transport in seedlings on ATVs and trailers with minimum long-term impact.

Parkswatch has commented before on this, but all a landowner needs to do is say they have a few cattle or sheep somewhere and that appears enough to justify the creation of a new road for agricultural purposes. While if a landowner claims they want to plant or manage a few trees that

appears enough to justify them creating a new road for forestry purposes. The consequence is, as at Balavil, that new roads can be created anywhere under the Prior Notification system.

That is fundamentally altering the character of the landscape in what is supposed to be a protected area, a National Park, where things should be done differently, .

So what's wrong with these proposals at Balavil?

Without a detailed survey of all the 7.75 km of proposed works, its impossible to establish how much of the proposal involves:

- repairs – which might be needed
- upgrades – which might in some cases be justified (there appear to be some forest felling operations linked to Track 4 and this might need to be re-inforced for timber trucks to use it)
- lengths of new track

One can question, however, whether its appropriate to create new “forestry” tracks in what is arguably the finest area of native woodland on the west side of the A9 hereabouts.

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Part of the native woodland looking over to Speyside with a short section of the unlawfully constructed new road visible centre

Planting is inappropriate here – the woodland should be allowed to regenerate/develop naturally – and the trees found here should not be “managed” whatever that means. So why is a new road required? If its to shoot deer, the estate should say that and apply for full planning permission which would allow a proper debate to take place about whether the construction of a new road here for deer management purposes is justified.

While its clear from the work that Balavil has undertaken to date that they are making attempts to restore the ground around the new tracks properly after construction (the horrific photo above shows the initial stage of new track construction) the evidence suggests there are also some fundamental design issues:



Base of new road being laid with signs of preliminary restoration of cutting on right side of track (stones piled on bank just above centre right of photo)



Some attempt has been made to grade the bank on the right so it will revegetate

The photos (see also one at top) suggest that the final result looks as though is going to be quite a bit better than the average new “track” featured on parkswatch. Yet in places, the new road, appears to contravene best practice guidance and is likely to become a problem in future:



This section of track appears far too steep and will be prone to erosion in future

Even if a new road were justified hereabouts, which I doubt, parts of its design appear fundamentally flawed. Unsurfaced roads should never be allowed to follow a line like this.

What needs to happen

First and foremost the law needs to change. When the Tories voted with the Scottish Government to reject Andy Wightman's proposed amendments to the Planning Bill, which would have brought all tracks in National Parks and other protected areas into the Planning System, the SNP Minister promised a further review of the Prior Notification System. That needs to start now – and Balavil provides evidence of why this is needed urgently.

Second, the Cairngorms National Park Authority needs to take far stronger action against tracks which are constructed without any form of planning approval. Until they do so, landowners will continue to break the law and the proliferation of roads across the National Park will continue unabated. In this

case the CNPA needs to be prepared to take enforcement action against the section of road where work has started and challenge why this could possibly be said to be for forestry purposes. Even if evidence is provided that the work might be justifiable for forestry purposes, the CNPA should at the very least require full restoration of any section of the road which does not meet SNH standards for the design of hill tracks. If the estate won't do that "voluntarily", the CNPA should use its enforcement powers.

Third, the CNPA needs to call in the Prior Notification from Highland Council and subject the rationale for the other six tracks/roads to critical scrutiny. As part of this, for any section of these route where the CNPA decide work is justified, they should require an appropriate specification. There should be different specifications for different types of repairs and upgrade, not just the one size fits all specification which has been submitted with the Planning Application.

I would hope that Balavil will be up for this. They have, to give them credit, stopped the work and said they will co-operate with the CNPA. A welcome change to many landowners in the National Park where negotiations about unlawful tracks have been going on for years (a further post on this soon). They have also agreed to meet me and a fellow campaigner to discuss their plans to change how land on the estate is used and managed. That is very welcome.

I live in hope that something positive might come out of something that should have never happened.

Category

1. Cairngorms

Tags

1. CNPA
2. grouse moors
3. hill tracks
4. landed estates
5. landscape
6. planning

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