

A tangled web – Highlands and Islands Enterprise and Cairngorm Ski Resort (1)

Description

“Oh what a tangled web we weave, when first we practice to deceive”

This quote from Sir Walter Scott’s epic poem, of 1808, *Marmion*, is a neat way of saying that when you lie or act dishonestly you initiate problems and a domino structure of complications which eventually run out of control. It could have been designed to describe Highlands and Islands Enterprise (HIE’s) management at Cairn Gorm. *Come into my parlour said the spider to the flies!*

And how many came?

At the AGM of the Aviemore and Glenmore Community Trust (AGCT) Mr D. Macleod, HIE’s head of Infrastructure, in reply to questions asked by the Trust:

- (a) admitted that HIE:had not considered a chair/ gondola hybrid in arriving at their Financial Business Case,

A3: DM replied that in terms of the business case there were six scenarios appraised within the business case and said that HIE did not look at an option where there was a chairlift/gondola hybrid.

- (b) revealed that HIE were/ are taking legal advice in relation to three businesses involved with the fiasco at CMSL.

Q1: Is there a legal case against the original construction company or an insurance claim?

A1: There are two litigations in action which cannot be commented on at present but yes there is ongoing litigation with regards to the original project team and contractor. There is also litigation against the previous operator.

[Both screenshots are from the draft AGM minutes of the AGCT.]

Unfortunately the AGCT failed to follow up the response to (a) by asking “Why not?”. My suspicion is that the AGCT were told by HIE that only questions submitted in advance would be answered, a standard political practice to avoid having to answer awkward questions or follow-ups. That “tangled web”!

The answer, however, should be quite obvious to anyone who has been following the saga on Parkswatch – HIE have little interest in finding ways to continue snowsports at Cairn Gorm. In 2019 I received a quote from Doppelmayr of £6m euros to install a 4 person chairlift from the Day Lodge to the Shielling, half way up Coire Cas. This included a provision that both loading areas could be

converted for use as a chair/ gondola hybrid and that the Shieling loading area could later be converted to a mid-station. That quote was to be held for 2020. As a rough estimate it should therefore be possible to upgrade this to a **NEW 6/6/8 chair/ chair/ gondola hybrid** and extend it to the Ptarmigan for about the same cost, £16 million, as **REPAIRING** the failed funicular, where maintenance costs will be ever increasing as older parts become obsolete. I am also reliably informed that Leitner POMA in Italy could supply a fully refurbished system with current technology for less than that! If a member of the public can do that, why didn't HIE?

The response under (b) is equally revealing.

In October 2020 the Post Audit and Post Legislative Scrutiny (PAPLS) Committee of the Scottish Parliament ([see here](#)) were told by Audit Scotland that they would not be able to answer certain aspects of the financial management at Cairngorm because HIE were currently considering legal actions against **two** businesses who had been involved with CMSL. These Audit Scotland weren't allowed to name. Mr Fergus Ewing, the Cabinet Secretary responsible for HIE, also referred to two legal cases in an article in the Strathy last week. So are there two legal cases or three? And if the latter, will HIE now correct Audit Scotland and Mr Ewing?

The three businesses named by Mr Macleod were:-

- (i) A.F.Cruden, the funicular designer,
- (ii) Morrison Construction, the construction engineers, and,
- (iii) Natural Asset Investments Ltd/Natural Retreats.

(i) A.F.Cruden originally designed the funicular as a steel structure based on the funicular at Ellmau ([see here](#)) but at the request of HIE then redesigned it as a concrete structure instead. That request came as a result of Morrisons saying that it could save money, or cut costs, by using concrete in place of steel. Neither A.F.Cruden nor Morrisons had ever designed, built or worked on a funicular before, but there are British Standards which A.F Cruden would have used to inform the in the design. A.F. Cruden were also contracted by HIE, until 2014, to carry out the funicular and uplift condition surveys on which repairs and maintenance were based. It appears, therefore, that HIE was quite happy with A.F. Cruden and the funicular up until then. That fact might make it difficult to make any legal action stick!

(ii) Morrison Construction were asked by HIE to find ways to cut costs as the project was over budget. They came back with the idea to use concrete, most of which was pre-fabricated off site. Again there are plenty of examples of concrete bridge construction worldwide, so that might not have been a problem and, at that time HIE's Head of Infrastructure was Mr K. Bryers, FRICS, who should have known what questions to ask. **Given that those in charge at HIE had approved the change in materials, it appears that any legal action can only be about the quality of the construction, not the design**

In both the ADAC Structures report of 2018 ([see here](#)), which saw the funicular carrying capacity and speed reduced, and the subsequent report by COWI ([see here](#)) poor build control and quality is consistently mentioned as being the cause of the structural defects.

(iii) Natural Asset Investments Ltd (NAIL). There appear two possible option for legal action here.

In the first instance at several points after the appointment of NAIL, HIE was alerted to concerns about the way NAIL/ NR were operating the Cairngorm Mountain business. However, they always replied that they were quite happy with the way operations were being conducted. In fact HIE were so impressed by NAIL/ NR that they had also awarded them the operations at Lews Castle, Stornoway, and the John O' Groats holiday development.

Secondly, there are possible grounds for legal action as a result of Cairngorm Mountain Ltd (CML) going into administration in November 2018, despite the principal shareholder giving assurances that they would guarantee continuation of the business only a month earlier. But whether a Court would agree those assurances should hold even when the funicular, the main source of income for the operating company, but which remained in HIE's ownership had been removed from service with no indication as to when it might be repaired, is another matter. The NAIL accounts ending 31/12/2019 state:

24. CONTINGENT LIABILITIES

During the year a claim was lodged against Natural Assets Investments Limited in respect of alleged damages caused by a former subsidiary undertaking for a breach of the company's guaranteed obligations. This claim is at an early stage and the directors have obtained legal advice and have requested but not yet received additional information to substantiate the claim. The directors will be defending the action and as at the date of signing these financial statements are of the view that no material losses will arise in respect of this legal claim.

This is clearly reference to possible litigation by HIE and shows the considered opinion of the NAIL directors that it had little chance of success!

The conclusion appears to be that there is only one of the three possible court case that has any reasonable chance of success: that against Morrison Construction and their site manager.

So far I have described how four flies are caught in the HIE web, but it extends far further than this. More in a further post!

Category

1. Cairngorms

Tags

1. Cairn Gorm
2. funicular
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4. Scottish Government

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