

Highlands and Islands Enterprise and the Cairn Gorm funicular Court Cases. Part 1.

Description



After the funicular on Cairn Gorm broke down and subsequent posts on Parkswatch, there were many calling for a judge lead inquiry into the causes of the failure of the business CairnGorm Mountain Ltd and the funicular railway. HIE have continually resisted this but are currently, and have for some time, themselves been taking legal action in the Court of Sessions against:-

- (1) A.F.Crudens, the original designer, now owned by Arch Henderson,
- (2) Morrison Construction Ltd, the company who built the railway, now owned by Galliford Try, and,
- (3) Natural Retreats/ Natural Assets Investments Ltd (NR/ NAIL), the operator of the ski area when the funicular was taken out of service.

An HIE source told *Herald on Sunday*: “The failure of key aspects of the infrastructure after less than 17 years of operation raised serious questions about the quality of the original project.”

Catherine MacColl for Galliford Try said HIE had not made clear what the breaches were while **Jonathan Brown for AF Cruden** said the action was of “significant complexity” with a claim for “unspecified remedial works” that must be worked out “proactively and sensibly”.

The screenshot below is from magazine, Scottish Construction Now of 06/07/2021.

To try and find out what was happening I submitted an FOI request to the Scottish Courts and Tribunals Service and on 10/11/2022 received this response:

Dear Malcolm Graham Garfoot,

Freedom of Information (Scotland) Act 2002 (FOISA)

Thank you for your request for information received by the Scottish Courts and Tribunals Service (SCTS) on 28 October 2022, in relation to court cases brought against the designer of the Cairn Gorm Funicular.

Having made enquiries with the Court of Session I can confirm that there are three live actions which have not yet been resolved. Once these actions have concluded, judgements will be published on the SCTS website.

I hope the above information is of assistance. However, should you feel dissatisfied with this decision or the manner in which your request has been handled, the Act provides for a review process to be conducted. Should you wish to take advantage of this process you may apply in writing for a review. Your request should provide details of why you wish a review to be carried out and should be made within 40 working days of receipt of this letter to:-

The Freedom of Information Officer
Scottish Courts and Tribunals Service
Saughton House
Broomhouse Drive
Edinburgh
EH11 3XD

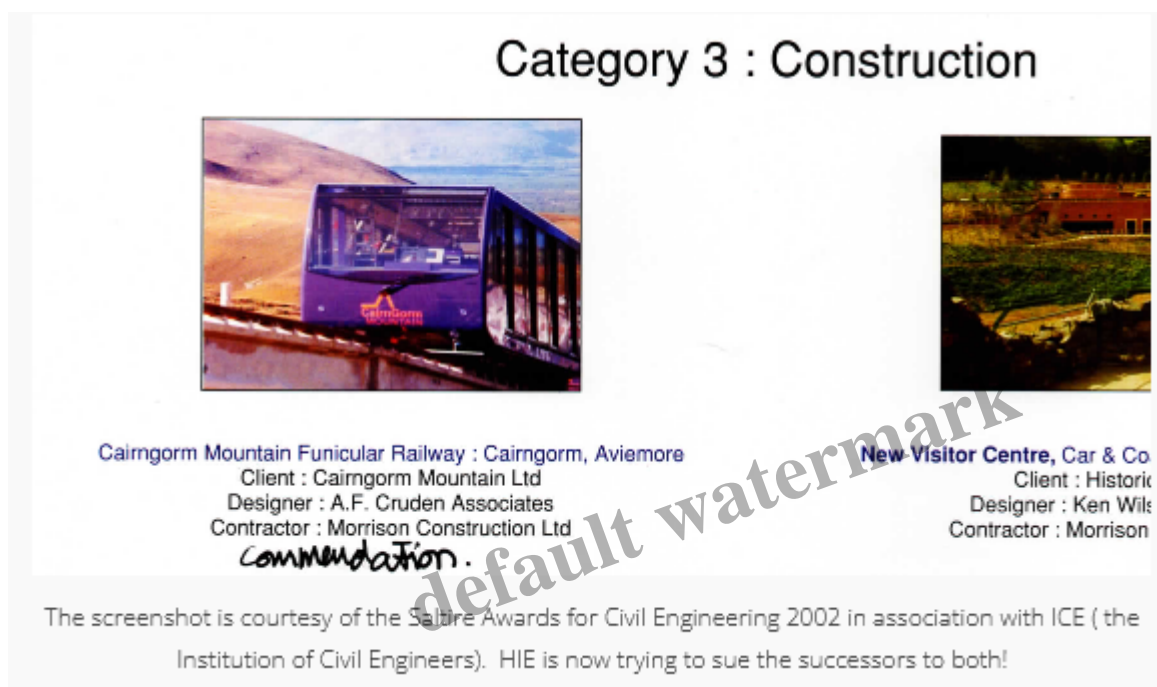
This information was confirmed a few days later by HIE to whom I had also submitted an FOI.

There are at least **two** other major parties involved in the funicular build who are NOT being sued,

something I will come back to in the next post. First let's look at those who are being sued and the possible reasons why.

(1) A.F.Crudens

After the decision to build a funicular was taken, this company was awarded the contract to design the buildings and railway and even received a commendation, along with Morrison Construction Ltd and CML, for the design!



Initially the railway was supposed to use steel beams for the rail supports, materials that were subsequently changed at HIE's request as part of a "cost-cutting" exercise. What an expensive mistake that has proven to be! From the limited Health & Safety File ([see here](#) and [here](#)) it would appear that the legal regulations governing the design of the funicular, i.e. the standard B.D.(Bridge Design) Regulations, were adhered to which begs the question why is A.F. Crudens being sued?

(2) Morrison Construction Ltd.

The Public Audit Committee Report, 2nd Report, 2010 (session 3) into the funicular contained this statement under costs and benefits:

27. Morrison Construction Ltd won the contract for the civil engineering works. An Austrian company, Doppelmayr, was the successful bidder for the trains and systems lot. Three contractors bid for the buildings contract and all exceeded the available budget by a large margin. HIE asked all three tenderers to find savings to meet its budget but only Morrisons fully accepted this request. HIE decided that the lots for the buildings and the civil engineering works should be merged in an effort to find savings. Following advice from its project managers, Turner and Townsend, HIE entered into negotiations with Morrisons for a combined tender for the civil engineering works and the buildings.¹⁷ Sandy Brady told the Committee that—

“a package of changes was made, which included reducing the specification of the buildings, removing the proposed middle station building and considering suggestions from Morrisons about how it could tackle this unique project. That was undertaken in partnership with the company and with our professional advisers at the time.”¹⁸

All three contractors' bids for the building contract “exceeded the available budget by a **LARGE** margin” but only Morrisons agreed to find savings. This raises questions about the relationship between Morrisons and HIE which could have a bearing on the court case, for example whether the other two contractors were given a chance to revise their quotes and, if so, why they decided not to lower them.

It seems unlikely, given their very close partnership, that HIE could successfully sue Morrisons for any changes to the funicular design that were instigated at HIE's request to cut costs. It seems more likely that HIE may be trying to sue Morrisons for the quality of the subsequent construction work.

How HIE think they can prove these cases is unclear, particularly when they have claimed in response to FOI requests that some of the original paperwork is missing. All the parties involved in the build were approved by the project management team, the then CEO and members of the Board of HIE, most of whom have now left/ retired from HIE (with the Chief Executive Ian Robertson leaving HIE and moving onto Morrisons board after the contract had been awarded). That raises the question whether those who are still alive will be called as witnesses in the court cases?

At least one of those responsible, however, who worked on the original procurement of the funicular, still works for HIE and would presumably be a key witness if the court cases ever go ahead: Susan Smith, Chief Executive of HIE's subsidiary Cairngorm Mountain (Scotland) Ltd, who was also involved in the Natural Retreats debacle.

(3). Natural Retreats/ Natural Assets Investment Ltd.

These associated companies were awarded the contract to operate the ski area and sold Cairngorm Mountain Ltd (CML) on the cheap by a team comprising the last CEO of HIE, Mrs C. Wright and the

current CEO of CM(S)L, Susan Smith! CML went into liquidation following the removal of the funicular from service due to safety concerns at the end of 2018.

This severely impacted on the economic sustainability of the business as seen in this screenshot from NAIL's accounts:-

During the year ended 31 December 2018, following the identification of historic issues with the funicular railway at Cairngorm Mountain during the annual safety inspection and after taking advice from experts it became necessary to close the railway. As a consequence of this Cairngorm Mountain Limited, the entity responsible for the resort's operation, suffered a severe cashflow shortfall and was subsequently placed into administration on 29 November 2018.

Note the use of the words "*historic issues*", i.e not their responsibility.

And then further on in the accounts is this statement which has appeared in the accounts in 2018,2019, 2020 and most recently 2021:-

NATURAL ASSETS INVESTMENTS LIMITED (REGISTERED NUMBER: 07541643)

**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS - continued
FOR THE YEAR ENDED 31 DECEMBER 2021**

22. CONTINGENT LIABILITIES

A claim has been 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 all of the 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.

Presumably this is referring to the action initiated by HIE against NAIL. After five years HIE has made no tangible progress.

While there was a lot of disagreement and unhappiness with the way the contract to operate CML had been awarded and was being operated, NAIL/NR was a tenant who suddenly lost a major source of income, through little fault of their own, for an unspecified length of time! No business can withstand that kind of loss and one would have thought HIE, if anyone, should know that..

As an aside NAIL's 2021 accounts also mention two other subsidiaries with HIE connections, Lews Castle in Stornoway and John O'Groats:-

17. CREDITORS: AMOUNTS FALLING DUE AFTER MORE THAN ONE YEAR

	Group		Company	
	2021	2020	2021	2020
	£	£	£	£
Bank loans (see note 18)	37,254	46,069	37,254	46,069
Other loans (see note 18)	64,496,312	64,261,078	60,593,387	60,509,770
Deferred government grants	1,482,150	1,518,300	-	-
	66,015,716	65,825,447	60,630,641	60,555,839

Government grants relate to a development grant received from Highlands and Islands Enterprise for development costs at John O'Groats, Scotland. The grant is repayable if any property is sold within 10 years from the date of the last payment.

With NAIL's accounts showing that they are now selling off many of their assets, it appears that John O'Groats will be sold in the next year or so when HIE's grant is no long repayable!

Part two of this post will follow shortly.

Category

1. Cairngorms

Tags

1. Cairn Gorm
2. CMSL
3. funicular
4. HIE

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