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# CAIRNGORMSNATIONALPARKAUTHORITY

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## FOR INFORMATION

**Title: BRIEFING ON CAIRNGORM MOUNTAIN FUNICULAR AND VISITOR MANAGEMENT PLAN (THE “CLOSED SYSTEM”)**

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### **Purpose**

To provide the CNPA Board, at their request, with a briefing on the visitor management arrangements (often referred to as “the closed system”) in place at the Cairngorm funicular.

### **Recommendation**

That the Board note the current position.

### **Executive Summary**

The funicular opened in December 2001. Since then it has provided an attractive and popular new visitor attraction (one of the top 10 paid visitor attractions in Scotland); provided a high quality winter sports facility; brought benefits to the local economy; provides a significant number of permanent jobs (around 100 FTEs); and provides a quality interpretation experience throughout the year.

The “closed system” was introduced to allow the operation of the funicular railway while at the same time ensuring continued protection of the designated fragile ecosystem on the Cairngorm plateau, a protection that is a duty flowing from European Directives, and a condition attaching to European Development Fund grant.

There is some dissatisfaction with the current “closed system” arrangements – not high enough to suggest an urgent need for a review, but enough to indicate that monitoring needs to continue, so that an informed view can be taken in due course. Some suggestions are made for further work in the meantime to add to that information base.

## BRIEFING ON CAIRNGORM MOUNTAIN FUNICULAR AND VISITOR MANAGEMENT PLAN (THE "CLOSED SYSTEM")

### Background

1. The funicular opened in December 2001. Since then it has provided an attractive and popular new visitor attraction (one of the top 10 paid visitor attractions in Scotland); provided a high quality winter sports facility; brought benefits to the local economy; provides a significant number of permanent jobs (around 100 FTEs); and provides a quality interpretation experience throughout the year.
2. Importantly, in light of our "Park for All" aspiration, it provides the opportunity for people of all ages and abilities to travel to the top of Cairn Gorm and see and feel something of the high mountain experience. The projection was for the 50,000 *non skiing* visitors on the old chairlift to increase to 165,000 following the building of the funicular; in the first three years of operation this figure has been exceeded. An increase in *skiing* visitors was projected from a pre-funicular figure of 94,000 to 150,000 (both rolling averages). In light of recent winters this needs to be re-evaluated, and in the last two winters the figure has been around 58,000.
3. The "closed system" was introduced to allow the operation of the funicular railway while at the same time ensuring continued protection of the designated fragile ecosystem on the Cairngorm plateau, a protection that is a duty flowing from European Directives.
4. There have been a number of complaints about the practicality and sense of the current management arrangements, often referred to as "the closed system", which restricts access to the plateau from the top station of the funicular. The level of dissatisfaction is very difficult to assess. The CNPA receives representations from time to time on both sides of the argument.
5. The issue is not whether protective measures should be in place, but more the question of how best to provide these in a way that meets the needs of protecting the environment, and enabling people to experience, enjoy and understand it, as well as make a living in it. This paper provides the background to the current arrangements and recent suggestions for changes.

### History

6. In summary:
  - a) In January 1994 the Cairngorm Chairlift Company submitted a planning application to construct a funicular railway on Cairn Gorm, and enlarge the Ptarmigan building close to the summit.
  - b) Amongst others, SNH objected on the grounds that as initially proposed, the development would lead to an increased number of visitors all year round, posing a threat to the Cairngorm candidate SAC (Special Area of Conservation) and SPA (Special Protection Area) because of potential damage to the arctic

- alpine habitats and disturbance of rare breeding birds. SAC and SPA are designations under European directives for safeguarding habitats and birds.
- c) A Visitor Management Plan (VMP) was prepared to address these concerns, and required to be a legally binding agreement as part of any planning consent issued – this was encompassed by a section 50 agreement, drawn up by the (then) Highland Regional Council. The VMP and the section 50 agreement was prepared in liaison with SNH, Highland Council, the Cairngorm Chairlift Company and HIE (the landowners). SNH was then able to withdraw its objection.
  - d) RSPB and WWF pursued a judicial review of the decisions relating to the protection of European sites at Cairn Gorm and proposals for construction of the funicular railway, and claimed that the granting of planning permission by Highland Council was unlawful.
  - e) The case was ruled as irrelevant and that there was no basis in law for the claims to be upheld; the courts also took the view that there was no need to refer the case to the European court.
  - f) In August 1999 construction work commenced.
  - g) An important aspect of the VMP is the Monitoring Programme focusing on visitor numbers and behaviour, and those key features for which the Cairngorms are of special interest. The VMP and the associated Detailed Monitoring Scheme (DMS) are in place to ensure that the project continues to have little impact on the fragile Cairngorm environment.

### **The Visitor Management Plan (VMP)**

7. The s50 agreement and associated VMP is a legally binding agreement, and is a condition of the planning consent. The VMP is also a condition attached to payment of the ERDF (European Regional Development Fund) grant.

8. The primary aim of the VMP is stated as follows:

*“the purpose of the VMP is to protect the integrity of the adjacent areas which have been designated or protected under the European Habitats and Birds Directives from the potential impact of non skiing visitors as a direct consequence of the funicular development”.*

9. The aims and objectives of the VMP are worth stating here, as they are clearly broadly based, recognising the competing interests in the area:

*“The overall aim of the VMP as specified in the s50 agreement is to ensure that the visitor management complies with international conservation legislation, while at the same time permitting the Company to achieve its operating objectives and thus continue in its key role of underpinning the local tourist economy. The objectives of visitor management are therefore:*

- a) *To safeguard the environmental and tourism resource;*
- b) *To promote greater understanding and appreciation for the mountain heritage*
- c) *To enhance the quality of the visitor experience*
- d) *To assist in addressing existing problems within the Ski Area.”*

10. Section 2.9 of the VMP acknowledges that changes may at some stage be entertained:

*“The approval of SNH and THC for the Company’s present proposals for visitor management within the ski area will not preclude later modifications to accommodate and support management proposals for the wider area under a potential National Park Management plan or a Rothiemurchus and Glenmore DMS subject of course to compliance with applicable EU conservation responsibilities and the agreement of the 50 signatories.”*

11. The VMP is also a condition of receipt of ERDF grant. The relevant condition relating to the closed system is:

*“With a view to protecting the nature conservation of the SPA and the SAC at the Ptarmigan plateau, the funicular railway will be permanently operated as a closed system. The permanence of the closed system is a condition which will be included in the VMP to be finalised after the construction. Any changes to the VMP either in its finalisation or by way of the subsequent review will be directed towards greater protection for the site classified under the Birds and Habitats Directives”.*

12. This could be construed as offering little scope for change.

### **Current VMP Arrangements (“The Closed System”) (see attached map - Annex 2)**

13. These can be summarised as follows:

- a) Egress from the Ptarmigan building for funicular passengers is only permitted for skiers and ski spectators during the ski season;
- b) Egress from the ski area into the Euro peans sites is not permitted for any visitors to the Ptarmigan using the funicular;
- c) A walkers’ entrance allows access to the facilities in the Ptarmigan building for those who walk up, but they are not permitted to take the funicular down.

14. As the attached map shows, the designated sites are not contiguous with the Ptarmigan building at the top of the funicular. So people leaving the Ptarmigan would not be walking immediately on designated sites - however, these would be relatively close by, and the “closed system” was put in place because of concerns about the ease of access to these sites from the top of the funicular.

### **Assessment of the “Closed System”**

15. Cairn Gorm Mountain Limited (CML) invited their resident ecologist to examine the existing “closed system” operating at the top of the Cairn Gorm Funicular. The report was completed in May 2004. In summary the report found that:

- a) Around 10% of funicular visitors who complete a comments form object to the restrictions, especially in the summer, and are thus dissatisfied;
- b) Leakage from the closed system does occur, although currently at a very low level (<1%) and is difficult to police;
- c) Staff have difficulty in managing the situation as customers may be abusive and staff themselves may not agree with the system (although this is improving through education);
- d) Some business (amount unknown) is lost because of the closed system;

- e) To date the Detailed Monitoring system (DMS) has been less than wholly successful due to a combination of factors relating to choice of methodology and rigour of the baseline surveys. However a new scheme is being developed.
- f) The lack of adequate baseline studies, particularly in terms of visitors and their activities means that it is not possible to accurately assess the full impact of the funicular development. The thrust of future monitoring is to identify future change there by guiding future management.

## Outdoor Access Legislation – Implications

- 16. There has been some debate recently as to whether the current closed system arrangements contravene the Land Reform Act. It is important in these early days of implementing this legislation, in the absence of any case law precedents, that its interpretation is considered carefully.
- 17. Two questions arise – does the closed system contravene the spirit of the right to responsible access; and is it incompatible with the letter of the law.
- 18. Part I of the Land Reform (Scotland) Act provides for a right of responsible access. There are certain constraints within the Act, in effect to ensure that access is “responsible”. The accompanying Scottish Outdoor Access Code is based on three principles, one of which is “care for the environment”.
- 19. More specifically (and we have taken legal advice on this, as set out in Annex 2), the funicular facility does not comprise land to which the access rights apply. Section 6 sets out circumstances in which access rights are excluded and not exercisable, and the funicular falls within one or more of the stated exclusions. The access rights do apply to the land immediately adjacent to the mountain railway and people are able to go there, but without using the funicular, if they wish. Cairn Gorm Mountain Ltd is not preventing access to this area.
- 20. Again on a point of law that has been raised, the section 50 Agreement was entered into by The Highland Council, Scottish Natural Heritage, Highlands & Islands Enterprise, the Cairngorm Chairlift Company Limited and the Governor and Company of the Bank of Scotland under section 50 of the Town and Country Planning (Scotland) Act 1972 and section 49A of the Countryside (Scotland) Act 1967. The operation of the funicular railway, including the arrangements for visitor management, is controlled through planning conditions and also by this Agreement. Although section 50 of the 1972 Act was repealed after the Agreement was executed, this does not mean the Agreement is invalid. The obligations in the Agreement in relation to the operation of the funicular railway consequently remain in effect.
- 21. Therefore on the basis of arguments put forward to date, there is no incompatibility of the closed system and Land Reform Legislation.

## Options for Visitor Management

- 22. Various solutions have been employed in similar situations elsewhere in the world, where visitor pressure requires to be managed in order to protect fragile environments. However, there are no ideal solutions. Physical barriers (closed doors,

walls, fences, etc) are effective but often lead to high levels of dissatisfaction among visitors; permits and guided walks can be reasonably effective but are expensive and prescriptive; while voluntary agreements backed by interpretive material are of uncertain effectiveness.

23. Compliance is a key issue, and cases of non-compliance with the current arrangements on Cairn Gorm are relatively few. Two points are relevant:
  - a) Interpretive material is crucial to securing a high level of compliance. No visitor is likely to voluntarily comply with a request he/she does not understand;
  - b) The number of consistent objections to the closed system is likely to decrease over time, as it becomes more accepted and understood. A relaxation of the closed system may then be seen as a positive step, with an associated high level of compliance.
  
24. A number of possible changes to the current closed system have been suggested at various times:
  - a) The option for those who have walked up of using the funicular to go down;
  - b) When snow cover is adequate, relaxing the restriction on ski tourers (currently prevented from leaving the "ski area") who ascend in the funicular car;
  - c) Develop a number of paths within the ski area offering visitors a chance to walk from Ptarmigan or the base station without having to use the main track. By offering a sensible range of alternative paths most visitors would be unlikely to feel the need to go into the Natura 2000 sites (note: two paths already exist, the main access path and the windy ridge path);
  - d) Coupled with the above, develop a range of interpretive material to ensure all visitors are aware of the fragility of the site and the need for conservation measures.
  
25. This briefing paper does not consider further the merits or otherwise of these suggestions, but merely notes that some modifications to the current arrangements may be possible. Clearly, further consideration would need to involve the signatories of the s50 agreement in the first instance, and ultimately would need wide consultation and support. Any changes (especially those requiring a more voluntary approach to compliance) would take time; would need careful monitoring and policing; and would cost money. They may need to be operated on a trial basis initially.

## Discussion

26. Several questions arise from this paper:
  - a) Are the current visitor management arrangements at the top of Cairn Gorm Funicular satisfactory – are they achieving the purpose for which they were introduced?
  - b) Is there a case for changing the visitor management arrangements at the top of the Cairn Gorm Funicular?
  - c) Is it possible to make any changes that are acceptable and compatible with the various legal requirements?
  
27. The "closed system" in place at Ptarmigan on Cairn Gorm was put in place to ensure continued protection of the fragile environment encompassed by the Natura

designated sites. The system has been in place since 2001, and in many ways has been successful in that cases of non-compliance are relatively few, and the number of visitors walking on the plateau are quite small. There is some dissatisfaction with the system.

28. 10% of on-site visitors express dissatisfaction – this is 10% of those who fill out a comments form. One can debate whether this is a high level, and sufficient to justify questioning the current arrangements. But numbers of complaints are not the only issue – an important question is whether we might be able to put in place even better arrangements which allow visitors closer contact with the environment, leading to a better appreciation of why the plateau is special and needs care and protection. Arguably once people understand that point, their actions become self-regulating. The logic behind this is attractive, but whether or not it would work in practice requires more information about people's behaviour in these circumstances.
29. Public agencies, Cairn Gorm Mountain Limited (CML) and the public are not questioning the need to protect the fragile plateau - indeed CML and public agencies have expressed commitment to the principle of ensuring the integrity of EU designated sites are not threatened by any operational changes.
30. Modifications to the "closed system" appear to be a possibility with in the terms of the current VMP agreement, but would clearly need to be supported by all the signatories. (Under the S50 agreement, any decision to change the current arrangements must be made by SNH and Highland Council after consulting the other signatories). Indeed, some minor adjustments have already been made. Visitors who have walked up are now allowed to enter the Ptarmigan building and use its facilities before returning outside again to walk down. Whether workable alternatives to the current arrangements could be found would require considerable additional work, underpinned by adequate information from:
  - a) the monitoring work at Cairn Gorm Mountain;
  - b) comparable experiences elsewhere in the world with protected sites;

## Conclusion

31. There clearly is some dissatisfaction with the current "closed system" arrangements – not high enough to suggest an urgent need for a review, but enough to indicate that monitoring of the issue needs to continue.
32. Any changes to the current arrangements would require an open and inclusive review. This would be resource intensive, involving public money. Before undertaking such a review, those involved would need to be satisfied that the effort was justified.
33. Any review would need to have sufficient information about the operation of the current system, and about alternatives. One of the main purposes of the closed system is to reduce the number of visitors going onto the plateau, by making the only viable option the long walk in. It would be difficult to have a meaningful debate about the success of the system without good data on this. The revised monitoring at the site has only been in place for a short time – it would be wise to allow a few more years' of data collection for a better informed review.

34. As part of the current debate, further information might usefully be collected from experiences in other parts of the world. Of fundamental importance is the issue of how people behave in situations in which they pay for transport in a funicular/cable car etc, and upon exit at the mountain top are then requested to restrict their movements (i.e. keep to paths, keep off certain areas, etc). A situation close to home, at Aonach Mor, might provide a useful source of data. This might be work which the CNPA could investigate.
35. Finally, against a background of better information, and as part of the National Park Plan, we would expect to develop a park-wide strategy on access and visitor management over the next few years. It would be sensible to make any review of the arrangements at the top of the Cairngorm Funicular part of this wider consideration.

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**1 June 2005**

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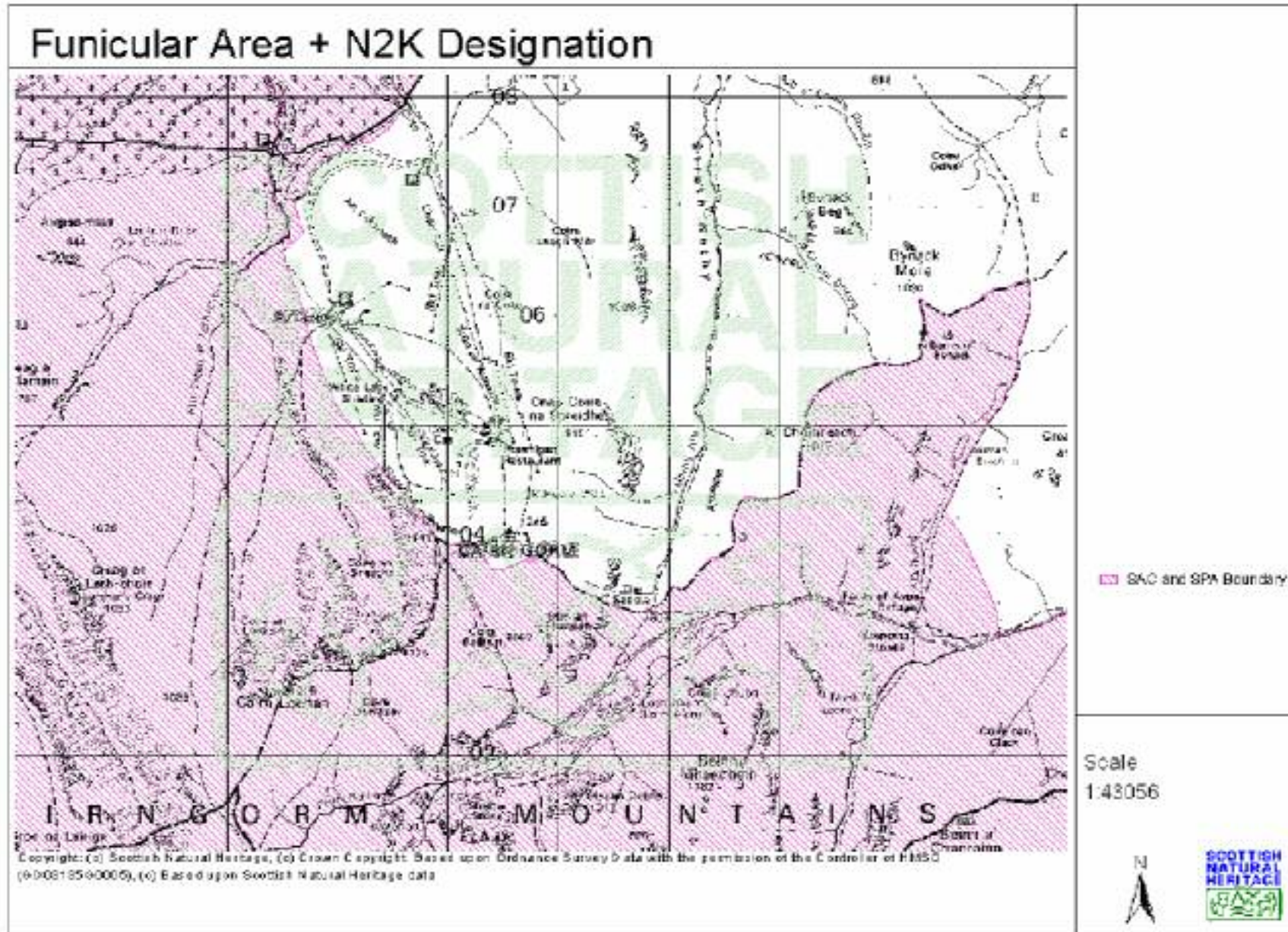
## Annex 1

### Legal Advice on Implications of Access Legislation for Egress from top of Funicular

1. The facility does not comprise land to which the access rights apply. The access rights are as defined in Section 1 of the Act, being a right to be on or to cross land. Section 1 (4) then provides that the reference to being on or crossing land is a reference to "going into it, passing over and remaining on it..... and then leaving it" or a combination of these. However, access rights are excluded and are not exercisable in respect of the situations and circumstances set out in Section 6 of the Act. There follows from this an argument that where the exclusion applies, there can be no "access rights" (as defined) and therefore the right of "going in to" is also excluded. The funicular would appear to possibly fall within one or more of the stated exclusions and therefore access from the funicular facility on to the mountain could be argued as excluded. People have no statutory right to use the funicular railway and can only do so if they choose to buy a ticket. If they do so, they are then bound by the terms and conditions set down by Cairn Gorm Mountain Ltd. Amongst other things, these conditions restrict egress from the Ptarmigan building, other than at defined times of year, for certain specific purposes and within a specified area. The Cairngorms National Park Authority's duties under the Act are therefore also excluded in these circumstances.
2. However, the access rights do apply to the land immediately adjacent to the mountain railway, as they do to most land in Scotland and that people are able to go there, but without using the funicular, if they wish. Cairn Gorm Mountain is not preventing access to this area.

### Status of the Agreement

3. The Agreement was entered into by The Highland Council, Scottish Natural Heritage, Highlands & Islands Enterprise, the Cairngorm Chairlift Company Limited and the Governor and Company of the Bank of Scotland under section 50 of the Town and Country Planning (Scotland) Act 1972 and section 49A of the Countryside (Scotland) Act 1967. The operation of the funicular railway, including the arrangements for visitor management, is controlled through planning conditions and also by this Agreement. Although section 50 of the 1972 Act was repealed after the Agreement was executed, there is no possibility that the Agreement is invalid. The obligation under the Agreement in relation to the operation of the funicular railway consequently remains in effect.



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