

CAIRNGORMS NATIONAL PARK AUTHORITY

Title: NEW BURDENS UNDER LAND REFORM ACT & PROPOSED EXTENSION TO SPEYSIDE WAY LONG DISTANCE ROUTE

Prepared by: KRISTIN SCOTT, SENIOR ACCESS OFFICER

Purpose

This paper aims to raise the Board's awareness of the broad implications of the Land Reform (Scotland) Act 2003 for the CNPA and its future role as "access authority" within the National Park area. It also seeks the Board's support for providing assistance to Scottish Natural Heritage (SNH) in its preparation of a proposal to submit to Ministers to extend the Speyside Way Long Distance Route (LDR).

Recommendations

Members are invited to note that:

- when the Land Reform (Scotland) Act 2003 takes effect next year, the CNPA will have a key role in delivering the provisions of Part 1 of the Act within the area of the National Park, which concerns primarily the new Rights of Access;
- the new burdens arising from the Act will have significant resource implications for the CNPA in terms of both staffing and other costs;
- the Speyside Way LDR fulfils three out of four of the stated aims of the National Park and provides a high quality recreation facility of both local and national importance from which there are derived clear social and economic benefits;
- a particular issue has arisen with regard to the Speyside Way LDR which presents an opportunity for the CNPA to begin to prepare for its new role under the access legislation.

Members are invited to support CNPA involvement in the mechanism being recommended for taking forward the development of a proposal to extend the Speyside Way LDR.

Executive Summary

When the Land Reform (Scotland) Act 2003 takes effect next year, the CNPA as "access authority" will have a significant role to play in delivering the provisions of Part 1 of the Act within the National Park area. This will bring with it both statutory duties and discretionary powers. Together these will have considerable resource implications.

A proposal in principle to extend the Speyside Way Long Distance Route to the south of Aviemore as far as Newtonmore was given Ministerial approval in 1997. There is growing public interest in seeing progress made towards implementation of the proposed extended route.

Responsibility for proposing any variation to an established LDR lies with Scottish Natural Heritage. Owing to difficulties in arriving at an acceptable route and other priorities of work, SNH is currently unable to make any rapid progress with developing a proposal to present to Ministers. In advance of assuming its statutory responsibilities under the access legislation, in its 'enabling' role, the CNPA can help facilitate more rapid progress towards the development of the route extension proposal by undertaking to engage someone under contract to do the necessary work.

NEW BURDENS UNDER LAND REFORM ACT & PROPOSED EXTENSION TO SPEYSIDE WAY LONG DISTANCE ROUTE

Land Reform (Scotland) Act 2003

1. The Land Reform (Scotland) Act 2003 received Royal Assent in February 2003. Within the meaning of this Act, the Cairngorms National Park Authority will become the “access authority” for land that falls within the area of the National Park. When the Land Reform Act takes effect, access authorities will have a significant role to play in delivering the provisions of Part 1 of the Act, which concerns primarily the new “Access Rights”.
2. The Act conveys a range of new duties and powers to access authorities. Prominent among these are specific duties to establish one or more Local Access Forums and to compile a Core Paths Plan within three years of the coming into force of the Act. There is also a duty to uphold access rights and a duty, shared with SNH, to publicise the *Scottish Outdoor Access Code*. While implementation of the Core Paths Plan is not a statutory requirement, access authorities have the power to maintain and signpost core paths. There are therefore significant resource implications for the CNPA, (both staff and financial costs), in both fulfilling the statutory duties and utilising the discretionary powers under the Land Reform (Scotland) Act. A key area of work for CNPA access staff is currently to identify and scope the new burdens that will fall to the CNPA in due course. This will form the basis of a funding bid to the Scottish Executive (to be put to the Finance Committee on 7 November and to the Board on 5 December) to secure appropriate resources to fulfil the statutory requirements of the Land Reform Act.
3. Before the Act can take effect, Ministers must approve the *Scottish Outdoor Access Code* and they must also approve a set of guidance, currently being drafted, and designed specifically to help access authorities carry out their functions under the legislation. While such approvals were expected in about the spring of 2004, there are now indications that there could be slippage with the issuing of this guidance, resulting in a delay in the Act taking effect.

Implications of Land Reform Act for Speyside Way LDR

4. Once the Land Reform Act takes effect, as access authority, the CNPA will be responsible for maintaining those parts of the Speyside Way LDR that fall within the National Park boundary. Partnership funding for this will be very limited because the local authorities will no longer have a statutory responsibility for those sections of the LDR that fall within the Park. Furthermore, because of Treasury rules, the CNPA will not be eligible to attract the 75% grant-aid which is currently available to local authorities to help manage and maintain LDRs. The overall liability of the LDR within the National Park is likely to be in excess of £100,000 per annum. This too will form part of the funding bid to the Scottish Executive.
5. An opportunity has arisen for the CNPA to become engaged in its future role in the management and maintenance of the LDR and that is to assist SNH with the preparation of a proposal to submit to Ministers to extend the route from Aviemore to

Newtonmore. This notion has been mooted for quite some time, but the momentum had stalled recently, partly through lack of clarity over future roles and responsibilities under the access legislation. In advance of assuming its statutory responsibilities, the CNPA now has an opportunity to help develop the LDR route extension in partnership with the other key players. Annex 1 provides details of the background to the Speyside Way LDR, the proposed extension and a mechanism for taking this forward. This initiative is likely to be of considerable local interest and Board members will be kept informed of progress.

Kristin Scott
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kristinscott@cairngorms.co.uk

PROPOSED EXTENSION TO SPEYSIDE WAY LONG DISTANCE ROUTE

Introduction

1. The Speyside Way Long Distance Route (LDR) was initially designated under the provisions of the Countryside (Scotland) Act 1967 by the Secretary of State for Scotland in 1979. The first section of the Speyside Way LDR, to run between Spey Bay and Ballindalloch, was opened in July 1982. There followed a period of stalemate over completion of the route from Ballindalloch to Glenmore (the then approved terminal), because of a dispute about ownership of the track-bed of the former Strathspey Railway. Further negotiations in the mid 1990s eventually led to a variation of the original proposed line of the route. This variation received approval in October 1997, and April 2000 saw the route finally completed, 21 years on from the date of the original designation, between Buckie and Aviemore.
2. The Speyside Way LDR is governed by a *Minute of Agreement* between the Highland Council and Moray Council, which confers responsibility for managing the route upon Moray Council. The Minute of Agreement also establishes the Speyside Way Management Group which is composed of representatives of Moray and Highland Councils, Scottish Natural Heritage, MBSE and the Cairngorms Partnership (now the Cairngorms National Park Authority) under the Chairmanship of the Moray Council. The Management Group is responsible, *inter alia*, for overseeing the management and maintenance of the Speyside Way, in accordance with a Development and Management Plan which is agreed between Moray Council, the Management Group and SNH.

Proposed Extension of LDR

3. There has been, and still is, considerable support and pressure from local communities to extend the route south of Aviemore. During the Buckie to Aviemore route development, a survey carried out by the Highland Regional Council in 1995 identified a number of possible options for extending the LDR further south. However, it became obvious there were complex issues to be resolved and it was decided to shelve the idea meantime in order to meet deadlines for a European funding application so as to ensure that the Buckie to Aviemore section could be completed. It was agreed that Scottish Natural Heritage (SNH) would look again at the possibilities for extending the route once it was complete between Buckie and Aviemore. This commitment extends only as far as Newtonmore, the southernmost village to meet the criteria for an LDR terminal. The principle of such an extension was set out in the paper approved by the Scottish Office in October 1997, and confirmed at the opening ceremony of the Ballindalloch to Aviemore section in April 2000.
4. In December 2000, SNH started to look again at the options identified in the 1995 survey and concluded that this could still form the basis for consideration of a route extension. A consultation was carried out with landowners and community councils, and a number of issues emerged, none of which are judged to be insurmountable. However, progress with the proposed LDR extension has been erratic due to a number of factors and this has resulted in a degree of frustration expressed by local communities in recent weeks, and also in the intervention of Fergus Ewing MSP.

Significance of LDR for the National Park

5. By definition, the Speyside Way LDR provides a recreation opportunity of national significance and quality. It does this by providing a rich, varied and satisfying recreation experience, based on the local natural and cultural heritage. The management of the Speyside Way LDR is sensitive to the needs of land managers, local communities and the natural heritage. The route also generates both social and economic benefits for the areas and communities through which it passes. The Speyside Way LDR therefore contributes towards three out of the four stated aims of the Cairngorms National Park.

Powers and Duties under the Countryside (Scotland) Act 1967 for Designating and Implementing LDR

6. The Countryside (Scotland) Act 1967 gave the Countryside Commission for Scotland the power and duty to identify and propose LDRs, and to promote and part-fund their implementation by Local Authorities, following designation by the Secretary of State for Scotland. On its creation in 1992, Scottish Natural Heritage (the successor body to the Countryside Commission for Scotland) inherited these powers and duties in relation to LDRs. Although Scottish Natural Heritage has a statutory, although discretionary, role in developing proposals for LDRs for consideration by the First Minister of the Scottish Parliament, this responsibility does not extend to implementing the proposals. Following designation, Local Authorities have the statutory duty to implement such proposals, and to maintain, manage, upgrade and promote the resultant LDRs.

Implications of the Land Reform (Scotland) Act for Implementation of LDR

7. The implementation of any proposal to extend the Speyside Way LDR within the area of the Park will become a statutory duty for the CNPA as access authority. This may involve, amongst other things, the negotiation of access agreements with landowners. It will also place a burden on the CNPA to assume *statutory* responsibility for the maintenance, management, and promotion of those parts of the LDR within the Park. It is envisaged that the present management structure will continue, with the CNPA as an additional signatory to the *Minute of Agreement*. There may also be a requirement to review any existing access agreements for the LDR within the National Park to ensure compliance with the provisions of the Land Reform Act for access rights.

Funding Implications of LDR for CNPA

8. At present SNH can fund Local Authorities, up to a maximum of 75%, towards the annual running costs of LDRs. However, SNH is prevented by Treasury rules from grant-aiding other Non-Departmental Public Bodies (NDPB). The implication for CNPA is that the full cost of maintaining the LDR within the Park boundary will have to be bid for and found from CNPA resources. A similar situation arises in the Loch Lomond and Trossachs National Park whereby the Park Authority will be responsible for funding that element of the West Highland Way that passes through the Park.

9. The Highland Council's contribution to the route for the next financial year is forecast at £24,500 with the supporting contribution from SNH expected to be around £43,300. To manage the route to the agreed standards will therefore require a contribution from CNPA of approximately £67,800. This will be a year on year on-going commitment. As the proposed extension to the route will lie exclusively within the Park, this figure will increase once the final section to Newtonmore has been approved. It is not possible to predict the additional costs of an extended LDR at this stage, as this will depend on the proposed route. However, based on current figures, the Speyside Way costs in the order of £1,600 per mile to operate (this includes staffing, vehicles, overheads etc). This is a top figure and could be less, depending on how much maintenance is required for any extended route. It is also worth noting that the Tomintoul Spur, most of which falls within the National Park, has not yet been formally approved by Ministers. The annual cost of managing this section is approximately £24,000 per annum and this would also have to be met by CNPA.

Extending the Route - A Way Forward

10. Scottish Natural Heritage has discretionary powers under the Countryside (Scotland) Act to present formal proposals on LDRs to Ministers, and this would include any proposed extension to the Speyside Way LDR. Preliminary work by SNH has identified a number of issues which are proving difficult, although not impossible, to resolve. Furthermore, SNH has indicated that, because of other priority work, it currently does not have the staff resources to make speedy progress with submitting a proposal to extend the Speyside Way LDR. SNH remains however, committed to the principle of extending the route, and has indicated that it would continue to fit in work towards achieving this. This however may not be popular with local communities who have expectations for progress to be made in the short term.
11. To enable more rapid progress to be made, SNH has offered to provide funding this financial year to engage someone under contract to help carry out the tasks needed to be done to prepare a proposal for Ministerial approval. SNH has however indicated that it does not currently have staff resources to manage the project and also that some element of match-funding is likely to be needed.
12. There is considerable merit in extending the route, thereby extending the social and economic benefits of the Speyside Way to other communities in Badenoch & Strathspey. While SNH remains committed to preparing a case for Ministerial approval, further progress will benefit from a focused approach which is not currently achievable. Slow progress, or lack of progress, will not be popular with local communities. The option of engaging someone under contract to assist with the work, with contributions from partner organisations, provides a way forward which will help to deliver the stated aim of extending the LDR, and which will also go some way towards meeting the expectations of the local communities.
13. A table showing the key tasks in taking forward the proposed extension is attached as Annex 2. It should be noted that it is unlikely that all of the tasks listed in Annex 2 will be achievable within a four month period, but that at very least it will enable a more precise assessment to be made of what needs to be accomplished and how long this will take. It is necessary therefore to look beyond the end of the current financial

year in terms of delivery of the tasks leading up to submission of a proposal to the Scottish Executive. The need to extend the contract, and how to fund it, would be reviewed by the Speyside Way Management Group towards the end of the initial four month period.

14. The costs of engaging someone under contract to carry out the initial tasks listed in Annex 2 will be based *pro rata* on the current costs of employing a Speyside Way Ranger. This totals approximately £20,000 per annum (salary £16,866; National Insurance £1078; overheads £2,000). It is expected that CNPA and SNH will share the main burden of the costs, possibly with contributions from the two Local Authorities and other sources as appropriate.

CNPA 'Enabling' Role and Recommendation

15. Given that SNH is currently unable to make any speedy progress with developing the route to the south of Aviemore, this provides an opportunity for the CNPA to help facilitate progress with a high-profile project, which would otherwise be slow in coming to fruition. It is recommended therefore that the CNPA, in advance of assuming its statutory responsibilities under the access legislation, engages someone under contract to assist SNH with developing a proposal for an extension of the LDR from Aviemore to Newtonmore. This would be under the auspices of, and with financial contributions from, the other members of the Management Group. Progress with the project would be closely monitored by the Management Group and any need to extend the contract beyond the four month period would be the subject to further discussion amongst the partners of the Management Group.

PROPOSED EXTENSION TO SPEYSIDE WAY LONG DISTANCE ROUTE AVIEMORE TO NEWTONMORE

1. Familiarise with route options, and history of the project to date.
PO/SNH
2. Check out options on ground in consultation with landowners and with SNH.
PO
3. Decide on preferred route.
PO/SNH/CNPA/THC/MC
4. Consult on preferred route with owners/occupiers, Community Councils, interested parties etc
(Estimate at least 10 owners). Consultation may include a lot of 'dead time'. Community Councils in particular will require a few weeks to consider.
PO/SWVG/ and CNPA Board members as appropriate
5. Revise route if necessary.
PO in consultation with SWVG members
6. Prepare path specification and cost any new build/improvements in light of responses to consultation. Can be doing this during consultation period for sections that are not contentious.
PO/Route Manager/THC
7. Consider further implications for staffing/maintenance of the route.
CNPA/THC/MC
8. Put together funding package.
PO/SNH
9. Write proposal.
PO/SNH
10. Submit to Scottish Executive for approval.
SNH
11. Negotiation of 'Agreements' (i.e. access for maintenance, agreement to promote & signpost route etc).
CNPA
12. Implement route.
CNPA/Route Staff