

# **AGENDA ITEM 8**

## **APPENDIX 5**

### **COMMITTEE REPORT** **JUNE 2016**

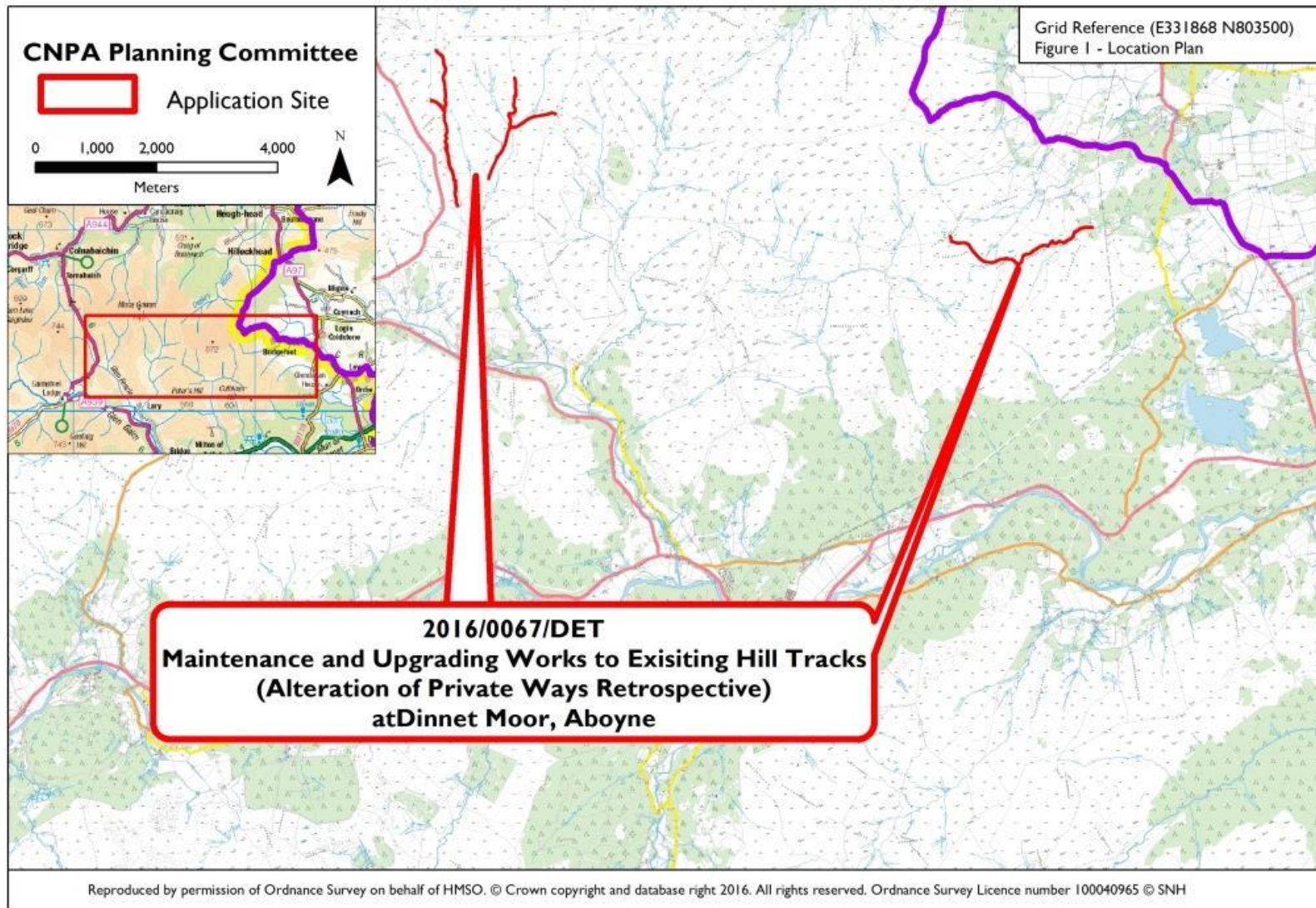
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**CAIRNGORMS NATIONAL PARK AUTHORITY**

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<b>DEVELOPMENT PROPOSED:</b>	
Maintenance and Upgrading Works to Existing Hill Tracks (Retrospective)	
<b>REFERENCE:</b>	2016/0067/DET
<b>APPLICANT:</b>	Findrack Investments Ltd
<b>DATE CALLED-IN:</b>	21 March 2016
<b>RECOMMENDATION:</b>	REFUSE AND AUTHORISE ENFORCEMENT
<b>CASE OFFICER:</b>	Matthew Taylor, Planning Officer

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## SITE DESCRIPTION, PROPOSAL AND HISTORY

### Site Description

1. The track sections subject to this planning application form part of a larger network of private ways (to be referred to as 'hill tracks') within the Dinnet Estate. The estate is located North of Ballater, comprising open moorland, some woodland to the lower ground, and small plantations such as 'The Tom' to the higher ground. The landform ranges in elevation from 136m up to 871m on Morven.
2. The method statement submitted with this application states there are approximately 27km of tracks on Dinnet Moor. CNPA observations suggest there are closer to 38km of track network within the estate. Two of the three track sections detailed in this application are located to the western part of the estate near Glenfenzie (track section 1 and 2) with the third track section located to the eastern part of the estate providing access from Redburn (track section 6). The location of the estate, track sections and land cover distribution is shown on the OS plan attached as **Appendix I** to this report.
3. The Dinnet Estate contains land protected under a number of statutory designations, being the Morven and Mullachdubh SAC and SSSI, River Dee SAC, and Muir of Dinnet SSSI, shown in **Appendix 4** to this report
4. The estate is also bounded by and visible from key transport routes within the National Park, being the A939, A93 and A97, and is intersected by popular recreational walking and cycling routes.

### Proposal

5. The drawings and documents associated with this application are listed on the next page and are available on the Cairngorms National Park Authority website unless noted otherwise:

<http://www.eplanningcnpa.co.uk/online-applications/#searchApplications>

Title	Drawing Number	Date on Plan	Date Received
Planning Application Drawing	2016-031/PO1	4/03/2016	21/03/2016
Designated Species Report		14/01/2016	21/03/2016
Method Statement		2/03/2016	21/03/2016

6. The applicant seeks full planning permission to retrospectively authorise the part completed alterations that have been made to track sections 1, 2 and 6 and to allow for further alterations to complete and mitigate for the environmental impacts from those works. The combined length of these track

sections is 7.5km. The submitted method statement refers to re-engineering some sections of road, repairing others and top dressing other sections.

7. The proposed specification and methodology for the required mitigation is detailed in the document “Method statement for mitigation and remedial works for tracks on Dinnet Moor” which is attached as **Appendix 2** to this report. The document refers in general terms to track surfacing, landscaping, turf lined ditching, berms/shedding bars and culverts.
8. Importantly it should be noted that “due to the recent weather and snow cover across the site in question”, the author of the method statement has been unable to carry out a site visit to inform the proposed works and as such the document does not provide for track section specific construction/alteration details.

## History

9. The works to the hill track network within the Dinnet Estate have been subject to CNPA investigation for planning compliance. The following paragraphs provide a summary of the key events leading to the submission of this retrospective planning application and the efforts made to seek a resolution.
10. In August 2013 the CNPA was made aware of potentially unauthorised works on hill tracks within the Dinnet Estate. The CNPA Planning Monitoring & Enforcement Officer undertook site inspections confirming that works to the private ways had occurred. The works comprised the creation and/or alteration of tracks and borrow pits and are considered to be significant and highly visible. The CNPA took a large number of photographs of the works for record and received additional photographs from a member of the public.
11. The Planning Monitoring & Enforcement Officer wrote to the estate advising them of what appeared to be a breach of planning control and unauthorised development. The CNPA planning service expressed the view that the works appeared to have been undertaken by the sporting tenant for the purpose of improving ‘sporting’ access and therefore, whilst there may be argued a secondary agricultural benefit, would not have qualified for permitted development rights that existed at the time.
12. Following legal advice the CNPA served a number of Planning Contravention Notices (PCNs) requiring the owner of the estate and others with an interest in the land to submit information for consideration within 21 days.
13. The new estate factor at the time of the PCN wrote to say that the works were undertaken using permitted development allowances for agricultural developments and that all further works were to be suspended. The PCNs provided detail of the agricultural unit and sporting tenancy, confirming that works were undertaken by the sporting tenant but with an agricultural benefit being claimed for the agricultural unit.

14. The CNPA undertook further visits with specialist landscape and land management advisors to determine the full extent of the works.
15. Further discussions with the estate and tenant took place. The estate claimed that the works were completed before the December 2014 changes to the regulations that introduced the requirement for Prior Notification/Prior Approval for agricultural and forestry private ways so were agricultural permitted development at the time of the works. It should also be noted that new tracks or upgraded tracks or private ways for 'sporting' have always required applications for planning permission.
16. The estate had not sought a screening opinion under the EIA regulations. In the CNPA's view, the works associated with the whole track network of new and modified tracks that were inspected would have been subject to EIA due to the extent of the works (over a distance of 17km) and the significant landscape impacts within the National Park. It was also noted that parts of the whole network fall within designated SAC and SSSIs, being where works that requiring EIA do not qualify for Permitted Development allowances.
17. In May 2015 the CNPA had met with estate representatives to discuss a way forward with the desired outcome to remedy the environmental harm that had been caused. It was agreed that the Planning Monitoring & Enforcement Officer and Landscape Advisor would meet on site with estate staff to further survey and assess the track works, to identify the mitigation requirements and consider the appropriate mechanism to regularise the developments. The CNPA reserved the right to use enforcement powers should the developer not co-operate voluntarily.
18. At this stage, the estate indicated that they wished to continue the works without a requirement to document their completed operations or the methods to achieve the required mitigation. The CNPA reminded the estate that all future works would be subject to a requirement for at least Prior Approval and would require to be documented in any event if they are to be applied for or retrospectively authorised.
19. The CNPA's Planning, Enforcement, and Landscape Officers undertook extensive site surveys over 2 days in July 2015. The survey work enabled the mapping and categorisation of tracks with detailed mitigation/remediation works being identified at more specific section level. The tracks sections were categorised into those which required urgent mitigation, those which required some mitigation and those that needed no mitigation.. This also allowed officers to consider both the impacts of the development, mitigation required and the potential routes to regularise the works as far as practicable and in the public interest, at the same time as offering a pragmatic solution to the applicant.
20. Although the recent works to the track network are unauthorised, officers came to the conclusion that with the cooperation of the estate, a compromise could be reached to focus on the most significant issues. Of the 38km of track surveyed, 22km require no additional works to mitigate and are of an

acceptable construction standard. However, 16km are more significant in terms of environmental impact and require planning applications (for the most significant works) or Prior Approval for additional works to mitigate the development.

21. Officers gave the applicant clear options for appropriate applications or notifications together with the CNPA’s survey mapping of the network and detailed mitigation and remediation recommendations from the CNPA Landscape Advisor. The applicant was clearly told that they would need specialist design input to identify and provide the practical solutions required to achieve the mitigation standards that would be required with any planning applications. They were also given a realistic timetable for the submission of applications. The CNPA provided two extensions of time to the applicant at their request and the current planning application was called in on the 21<sup>st</sup> March, two months after the original deadline for submission.
22. The current planning application relates to 7.5km of modified existing track where retrospective permission is sought to authorise the recent works and permit the further detailed mitigation works to secure an acceptable standard of development on the ground. The CNPA consider it essential that the actual and proposed works are fully considered and documented to inform the engineering operations. These sections of track are at risk of significant deterioration without early intervention.
23. There are further sections of new track on the estate, not included in current planning application, that will require retrospective planning applications to be consented in order to become authorised. These tracks sections do not appear to be modified from existing tracks despite the estate’s assertions that all works are to ‘pre-existing tracks’. This has been highlighted by SNH as part of discussions with the CNPA, and the North East Mountain Trust in correspondence to Aberdeenshire Council. The construction of these new sections of track has not created such severe environmental impacts as the modified sections.
24. There are also sections of track that require less mitigation and will require Prior Approval for mitigation works. The CNPA has already responded to Prior Notifications received by Aberdeenshire Council in March 2016. The applicant has been reminded that Prior Approvals do not retrospectively authorise works already completed, but are an opportunity to properly manage the works necessary to get the tracks to a suitable standard.

## **DEVELOPMENT PLAN CONTEXT**

### **Policies**

<b>National Policy</b>	Scottish Planning Policy 2014
<b>Strategic Policy</b>	Cairngorms National Park Partnership Plan 2012 - 2017
<b>Local Plan Policy</b>	Cairngorms National Park Local Development Plan (2015) Those policies relevant to the assessment of this

	application are marked with a cross	
POLICY 1	NEW HOUSING DEVELOPMENT	
POLICY 2	SUPPORTING ECONOMIC GROWTH	
POLICY 3	SUSTAINABLE DESIGN	X
POLICY 4	NATURAL HERITAGE	X
POLICY 5	LANDSCAPE	X
POLICY 6	THE SITING AND DESIGN OF DIGITAL COMMUNICATIONS EQUIPMENT	
POLICY 7	RENEWABLE ENERGY	
POLICY 8	SPORT AND RECREATION	
POLICY 9	CULTURAL HERITAGE	
POLICY 10	RESOURCES	X
POLICY 11	DEVELOPER CONTRIBUTIONS	

25. All new development proposals require to be assessed in relation to policies contained in the adopted Local Development Plan. The full wording of policies can be found at:

<http://cairngorms.co.uk/uploads/documents/Park%20Authority/Planning/LDPI5.pdf>

### **Planning Guidance**

26. Supplementary guidance also forms part of the Local Development Plan and provides more details about how to comply with the policies. Guidance that is relevant to this application is marked with a cross.

Policy 1	New Housing Development Non-Statutory Guidance	
Policy 2	Supporting Economic Growth Non-Statutory Guidance	
Policy 3	Sustainable Design Non-Statutory Guidance	X
Policy 4	Natural Heritage Supplementary Guidance	X
Policy 5	Landscape Non-Statutory Guidance	X
Policy 7	Renewable Energy Supplementary Guidance	
Policy 8	Sport and Recreation Non-Statutory Guidance	
Policy 9	Cultural Heritage Non-Statutory Guidance	
Policy 10	Resources Non-Statutory Guidance	X
Policy 11	Developer Contributions Supplementary Guidance	

### **CONSULTATIONS**

27. A summary of the main issues raised by consultees now follows:
28. **SNH** (who under a protocol with the CNPA, don't provide advice on Landscape matters in the National Park) considers that the proposal could be progressed with appropriate mitigation. However, because it could affect international important heritage interests, they **object** to the proposal unless it is made subject to conditions so that the works are done in accordance with the mitigation contained in their response. SNH also state that the CNPA are



required to consider the effect of the proposal on the River Dee SAC before it can be consented by undertaking a Habitats Regulations Appraisal.

29. SNH consider that the proposal has the potential to generate significant quantities of silt which could enter the Glenfenzie and Red Burns and thereby the River Dee Sac and the Muir of Dinnet SAC at Loch Davan. Designated species namely salmon and freshwater pearl mussels, and the clearwater loch habitat at Loch Davan, are susceptible to the effects of siltation. In the view of SNH the proposal is likely to have a significant effect on those interests. Consequently an appropriate assessment is required.
30. However, SNH consider that if the proposal is undertaken strictly in accordance with a construction method statement, that outlines the site specific measures necessary to minimise the risk of pollution and run off during construction work, it may no longer be likely to have a significant effect and an appropriate assessment will no longer be required.
31. In respect of borrow pits within Muir of Dinnet and Morven and Mullachdubh SSSIs whilst the method statement refers to borrow pits there is no information to state whether these are subject of the planning application and therefore to be used. Works to borrow pits within the SSSIs may require consent from SNH.
32. In respect of the Muir of Dinnet SSSI and its geomorphologic interest, SNH note that the original track cuts across a number of sub glacial ridge and channel features, with the recent upgrading of the track causing additional damage which cannot be restored and has increased visual intrusion. The proposed mitigation should benefit the geomorphologic interest by visually reducing the interruption to the landforms.
33. The **Ballater and Crathie Community Council** have been consulted but have not responded to date.
34. **CNPA Landscape Adviser** describes the landscape character of the area and that tracks are a feature of these landscapes but they can impact significantly on the special landscape qualities of the extensive moorland. Parts of the area are well-walked by the public and used by cyclists with parts of sections 1 and 6 of the tracks being highly visible from the public road network.
35. The landscape and visual impacts from the development are as follows:
  - a) Track Section 1 – harsh linear features in the landscape tracking up the nose of the ridge and are very visible from the A939.
  - b) Track Section 2 – owing to their steepness, poor drainage, over steepened cut peat faces, side cast and poorly restored materials these tracks have become pronounced scars in the landscape, affecting the character and experience of this part of the National Park.

- c) Track Section 6 – The light colour of the stone here combined with ongoing erosion on these steep slopes mean that this track is a highly visible scar in the landscape from the Howe of Cromar and beyond.
36. The landscape advisor considers that these sections of track have a significant landscape and visual impact at present. The submitted method statement contains some good general guidance but sections 2 and 6 in particular present some key challenges which will only be overcome with careful attention to detail. More site specific information is required in respect of drainage, construction and restoration. More detail is required on the siting of drainage features, for example more water bars might be necessary on steeper slopes to reduce the likelihood of scouring.
37. The specific information required for each track section is as follows:
- a) Track Section 1 – Specific details required to focus on re-vegetation to reduce impact. This should identify and develop those parts of the method statement that are relevant to section 1.
  - b) Track Section 2 – The conditions here are very challenging. In order to ensure that a stable and long lasting solution can be achieved site specific construction details will be required detailing how drainage issues and the over steepened slopes will be dealt with. Further site specific construction information is required in the form of site survey photographs of key problem areas, annotated cross section drawings/method statements illustrating/describing the proposed drainage and construction solutions for these problem areas including site specific approaches to vegetation restoration.
  - c) Track Section 6 – Steep slopes, bedrock and mobile granular material will make it a challenge to establish long term effective drainage and get vegetation established on bare slopes. Further site specific construction information is required in the form of site survey photographs of key problem areas, annotated cross section drawings/method statements illustrating/describing the proposed drainage and construction solutions for these problem areas including site specific approaches to vegetation restoration.
38. There is a requirement to identify sources of borrow for the works and proposals for the restoration of these areas post extraction of materials.
39. A Construction Method Statement should detail methods which will be undertaken to prevent any pollution incident in the watercourses adjacent to the hill tracks using 'SEPA PPG 5 – Working near or in a watercourse'
40. The **CNPA Ecology Adviser** refers to the nearby environmental designations and their qualifying interests. The potential impacts during construction are discussed, including the potential to spread Juniper Dieback fungus through the movement of materials, the loss of vegetation including upland heath Annex 1 priority habitat and further degradation adjacent to tracks, with opportunity for micro-siting vegetation being available. Silt

generation has the potential to reach watercourses and pollute gravels required for spawning salmon and freshwater pearly mussels. Reference is also made to nearby habitat supporting Northern February Red Stonefly and the risk from sedimentation. Additionally breeding birds should not be disturbed. It is considered that the impact on otter and water vole would be negligible.

41. The ecology advisor makes reference to the drainage solutions which have been described in the 'Method statement' but there are no site specific details. Site specific siting of culverts, drainage ditches and water bars have the potential to reduce the likelihood of erosion that generates silt and sediment, for example more water bars on steeper sections. Details are not provided.
42. An Ecological Clerk of Works should be present on site during upgrading works to ensure that every opportunity is taken for successful habitat restoration and there is not significant disturbance to rare species.
43. In response to the requirement to undertake a HRA, the development has the potential to negatively impact through construction and on-going activity on populations of designated features of the River Dee SAC which are Otter, Atlantic Salmon and Freshwater Pearl Mussel, which are all dependant on clear flowing, well oxygenated water. The CNPA cannot conclude that the development would not have a significant effect on the designated features of these European designated sites without more site specific information within a construction method statement and details of finished track elevation, camber and drainage solutions to ensure that there will be no short or long term impacts during construction and operation.
44. The **CNPA Outdoor Access Officer** considers that the development would have minor impact on outdoor access, but has the potential to be addressed by appropriate mitigation measures. This would include details on location of the works and site signage to give the public sufficient warning about the works to enable them to choose another route.

## REPRESENTATIONS

45. The application was advertised and no comments have been received.

## APPRAISAL

### Principle of Development

46. Subject to the extent, specific site location, design and means of construction, the principle of the formation or alteration of hill tracks over the Dinnet Estate is acceptable. Hill tracks provide access for agricultural, forestry and sporting purposes whilst also providing access to land for walkers and cyclists.
47. In this case, as the hill track developments should have been subject to Environmental Impact Assessment, they did not benefit from permitted development allowances both prior to, and following, the Scottish Government

amendments to the regulations in late 2014. Because of this, full planning applications are required to retrospectively authorise the track modifications and to approve the further works that are required.

48. It should be noted that each planning application must be contained to less than 8km in length to qualify as 'local' development under the planning hierarchy. In this instance and in anticipation of the co-operation of the applicant, the subdivision of the track network into smaller sections as part of the various submissions was considered the most pragmatic way forward to secure the necessary standards on the ground as quickly as is possible.
49. The submitted planning application is assessed against the Cairngorms National Park Local Development Plan 2015 (CNP LDP) with other material considerations, namely SPP, informing the assessment.

### **Landscape and Visual Impacts**

50. The estate is located to the north of Ballater and is bounded by and visible from key transport routes within the National Park, being the A939, A93 and A97. The estate is also intersected by popular recreational walking and cycling routes.
51. The landscape character of this area is described in the North Eastern Hills Section of the Cairngorms National Park Landscape Character Assessment (2009). Tracks are a feature of this landscape but they can impact significantly on the special landscape qualities of the extensive moorland. Understandably minimising the landscape and visual impact from such track works is crucial in maintaining the landscape character and ensuring the public experience of the Park is not compromised.
52. The diverse and spectacular landscapes are one of the Park's key assets and the distinctive character of the landscape is one of the reasons for the creation of the Park. Policy 5: Landscape of the CNP LDP 2015 states that there will be a presumption against any development that does not conserve and enhance the landscape character and special qualities of the Cairngorms National Park including wildness, and in particular, the setting of the development.
53. Proposed development that does not complement and enhance the landscape character of the Park and the setting of the proposed development will be permitted only where:
  - a) any significant adverse effects on the landscape character of the Park are clearly outweighed by social or economic benefits of national importance; and
  - b) all the adverse effects on the setting of the proposed development have been minimised and mitigated through appropriate siting, layout, scale, design and construction to the satisfaction of the planning authority.

54. In order to avoid unacceptable landscape impacts, all developments must be designed to complement their setting. Policy 3: Sustainable Design of the CNP LDP 2015 requires that a design statement accompany all development proposals to demonstrate how the proposal has been designed to use materials and landscaping that will complement the setting of the development. The planning application was submitted with a 'Method statement for mitigation and remedial works for tracks on Dinnet Moor' written by Highland Conservation Ltd on behalf of Findrack (Investments) Ltd. This document refers to track 'maintenance' works and was produced to address planning authority concerns. It is considered that the continued reference to 'maintenance' works is misleading and downplays the environmental impacts arising from the development.
55. It is clear from the site surveys undertaken by CNPA officers that the works undertaken, include significant engineering operations with some widening and re-alignment of, for the most part, pre-existing track routes, constitute 'alterations' to the hill tracks, with other sections not forming part of this application being considered as 'formation' of new tracks. A small selection of photographs taken of the hill track network during the CNPA surveys in July 2015 are attached as **Appendix 3** and serve to illustrate the visual presence of the track works.
56. The submitted method statement confirms that no site visits were undertaken to inform the proposed design methodology, and as such the document contains some good general detail but with no section-specific reference. It should be noted that as part of the CNPA investigation of the works a full survey of the track network was undertaken by CNPA officers with section specific mitigation and remediation requirements being provided to the applicant. The applicant was advised that specialist advice must be sought to identify the methods available to secure the mitigation. Such specialist advice may be from experienced contractors who would be required to walk the route making reference to the mitigation/remediation standards that must be achieved, and drafting a detailed section specific construction method statement. They were also advised that the statement may include photographs, sections, and detailed methodology.
57. Having considered the submitted detail, the CNPA Landscape Advisor states that more site specific information is required in respect of drainage, construction and restoration. More detail is required on the siting of drainage features, for example more water bars might be necessary on steeper slopes to reduce the likelihood of scouring, and offers detail of the specific information requirements for each section.
58. Therefore, whilst the method statement provides some general guidance and good practice reference, it is not sufficient to properly demonstrate that the works required to mitigate the environmental impacts have been identified and can be delivered. Furthermore the source of the materials (borrow pits) for the works has not been identified; this may have implications in terms of sensitive areas and the transporting of potentially large quantities of materials, and the best approach to development during the construction phase.

59. The proposals therefore fail to comply with Policies 3: Sustainable Design and 5: Landscape of the Cairngorms National Park Local Development Plan 2015.

### **Other Environmental Impacts**

60. The Dinnet Estate accommodates land protected under a number of designations as outlined in paragraph 3 of this report and also shown on **Appendix 4**.
61. Policy 4: Natural Heritage of the CNP LDP 2015 states that development likely to have a significant effect on a Natura 2000 site must demonstrate no adverse effect on the integrity of the site. The CNPA must decide if an aspect of the project is likely to have a significant effect on a Natura site as a screening stage in Habitat Regulations Appraisal.
62. SNH consider that the proposal has the potential to generate significant quantities of silt which could enter the Glenfenzie and Red Burns and thereby the River Dee Special Area of Conservation (SAC) and the Muir of Dinnet SAC at Loch Davan. Salmon, freshwater pearl mussels, and the clearwater loch habitat at Loch Davan are susceptible to the effects of siltation. In the view of SNH the proposal is likely to have a significant effect on those interests. Consequently an appropriate assessment is required. Notwithstanding this SNH consider that the development could be progressed with appropriate site specific mitigation that would require to be provided before development is commenced.
63. The CNPA ecology advisor makes reference to the drainage solutions which have been described in the 'Method statement' but there are no site specific details. Site specific siting of culverts, drainage ditches and water bars have the potential to reduce the likelihood of erosion that generates silt and sediment, for example more water bars on steeper sections. In addition, measures for material transfer and storage during construction, with locations for borrow pits and any necessary protection of burns, should be identified. Unfortunately precise details are not provided.
64. In response to the requirement to undertake a HRA, the development has the potential to negatively impact through construction and on-going activity on populations of designated features of the River Dee SAC which are Otter, Atlantic Salmon and Freshwater Pearl Mussel, which are all dependant on clear flowing, well oxygenated water. To determine no effect on designated features through the HRA process CNPA would require more site specific information within the construction method statements and details of finished track elevation, camber and drainage solutions to ensure that there will be no short or long term impacts during construction and operation.
65. The CNPA Ecology team have advised that an HRA has been undertaken based on the limited details submitted. It is clear that we do not have sufficient information to give us the level of certainty required (beyond reasonable

scientific doubt that there will be no adverse effect). In other words it fails the test on site integrity. Therefore if members were minded to approve it then it must be referred to Scottish Ministers in line with regulations.

66. Policy 4 of the CNP LDP 2015 also makes reference to national designations and other important natural and earth heritage sites and interests, and protected species. It is necessary that applicants demonstrate that their development would have no adverse effect on the integrity of the area or the qualities for which it has been designated. There are only exceptional circumstances where development may proceed with adverse effects, such as when any adverse effects are clearly outweighed by social, economic or environmental benefits of national importance, and compensated by the provision of features of commensurate or greater importance.
67. Policy 10: Resources of the CNP LDP 2015 requires that all developments do not result in the deterioration of the current or potential ecological status of water resources or their amenity or recreation value. Developments must demonstrate any impacts (on the water environment) can be adequately mitigated. In this instance, the planning application does not contain sufficient detail to accord with the policy.
68. In addition to the main concerns over sedimentation of the SAC both during and post construction, SNH and CNPA ecologists make reference to ornithological interests and the need to avoid disturbance during breeding seasons. Also the geomorphologic interests at the Muir of Dinnet SSSI are not sufficiently considered and could potentially benefit from appropriate mitigation.
69. Unfortunately, whilst a North East Scotland Biological Record Centre Report listing designated and non-designated priority species, sites and habitats was provided, this has not informed site specific mitigation, or been referenced in the method statement. Therefore it has not been demonstrated that there would be no adverse effects on the integrity of the area or designated species within or nearby. Furthermore the planning application does not indicate how opportunities for environmental enhancement are to be applied.
70. The development therefore fails to comply with Policy 4: Natural Heritage and Policy 10: Resources of the Cairngorms National Park Local Development Plan 2015.

## CONCLUSION

71. Whilst the proposed development is acceptable in principle, the planning application contains insufficient information to determine that the landscape and visual impacts arising from the unauthorised development are to be suitably mitigated for and remedied, and that the future works would be achieve an acceptable level of mitigation without further detrimental impacts.

72. The planning application does not demonstrate that the track network will be finished to a standard that would minimise any risk of future degradation and associated landscape and visual impacts within the National Park. Furthermore there is insufficient information to determine that the development will not have a significant adverse impact, both during and post construction, upon the qualifying interests of the River Dee Special Area of Conservation, nor that appropriate steps are to be taken to avoid loss and impacts upon habitat and species such as vegetation, ground nesting birds and hares, and other species of interest.
73. The planning application contains insufficient information to demonstrate compliance with relevant provisions and intent of the Cairngorms National Park Local Development Plan 2015 Policies 3, 4, 5 and 10 and there are no other material considerations that would warrant the setting aside of adopted policy. Should Members be minded to approve the planning application it must be referred to Scottish Ministers.

### **Enforcement**

74. Whilst the refusal of planning permission for the track works provides certainty, the planning application is in part retrospective and the works remain unauthorised and require further mitigation. Officers recommend that enforcement action is now pursued to secure the necessary mitigation works to the hill track network of Dinnet Estate. Members are asked to delegate necessary enforcement action to officers, in liaison with the Planning Committee Convenor, order to remedy any harm caused by the tracks subject to this application, as well as the wider unauthorised track network within the Dinnet Estate.

### **RECOMMENDATION**

**That Members of the Committee support a recommendation to: REFUSE FULL PLANNING PERMISSION for Maintenance and Upgrading Works to Existing Hill Tracks (retrospective) At Land at Dinnet Moor, Dinnet, Aboyne and DELEGATE ENFORCEMENT ACTION to officers for unauthorised tracks on the Dinnet Estate that are causing a significant adverse impact.**

**Reason:** It has not been demonstrated that the works subject to the development proposal have been designed to minimise and mitigate the landscape and visual impacts to a standard that complements and enhances the landscape character of this part of the National Park. The significant adverse effects on the landscape character of the Park are not outweighed by social or economic benefit of National Importance. Insufficient detail has been provided to demonstrate that the development proposal would have no adverse impact upon the River Dee SAC and Muir of Dinnet SAC and their qualifying interests. Therefore, the development proposal does not comply with the relevant provision and intent of the Cairngorms National Park Local Development Plan (2015) Policies 3: Sustainable Design, 4:



Natural Heritage, 5: Landscape and 10: Resources and there are no other material considerations that would warrant the setting aside of adopted planning policy.

The map on the first page of this report has been produced to aid in the statutory process of dealing with planning applications. The map is to help identify the site and its surroundings and to aid Planning Officers, Committee Members and the Public in the determination of the proposal. Maps shown in the Planning Committee Report can only be used for the purposes of the Planning Committee. Any other use risks infringing Crown Copyright and may lead to prosecution or civil proceedings. Maps produced within this Planning Committee Report can only be reproduced with the express permission of the Cairngorms National Park Authority and other Copyright holders. This permission must be granted in advance.