
CAIRNGORMS NATIONAL PARK AUTHORITY FINANCE COMMITTEE

FOR DECISION

**Title: A REVIEW OF THE DIRECT RESPONSIBILITY OF CNPA
FOR MANAGEMENT OF INFRASTRUCTURE WITHIN
THE NATIONAL PARK**

**Prepared by: Fran Potheary, Outdoor Access Officer
Murray Ferguson, Sustainable Rural Development Director**

Purpose

This paper reviews CNPA responsibility for the management of infrastructure and makes recommendations to improve management of associated risks.

Recommendations

The Finance Committee is requested to:

- a) Note the findings of review and the general issues raised;
- b) Agree that a Register of Agreements is produced for regular review as part of CNPA risk management processes

Executive Summary

This paper reviews the extent of the CNPA's direct responsibility for management of infrastructure in the Park, including the formal agreements that CNPA has in place with land managers. Very few agreements have been entered into and, compared to other National Parks and local authorities, the level of CNPA responsibility for direct management of infrastructure is exceptionally low. This situation reflects the enabling approach that has been taken to the management of the Park. This paper summarises how these agreements have been reached and proposes a number of measures to manage the implications and guide preparation of future agreements.

A REVIEW OF THE DIRECT RESPONSIBILITY OF CNPA FOR MANAGEMENT OF INFRASTRUCTURE WITHIN THE NATIONAL PARK – FOR DECISION

Scope

1. This review considers all those agreements to which CNPA is a party that relate directly to the management of land or infrastructure, including those agreements made under Section 21 of the Land Reform Act for paths and bridges for the Point of Entry Marker Project. The review excludes references to agreements made under the planning system such as Section 75 agreements. It also excludes corporate or administrative agreements, for example leases for buildings. The review excludes the conditions that CNPA has put on grant-aided projects that are taken forwards by other parties.

Overview of Agreements in Place

2. There are broadly two types of situation where CNPA has assumed direct responsibility for the management of infrastructure.

Point of Entry Markers

3. The CNPA has entered into agreements with land owners with regard to the Point of Entry Markers. In these cases, CNPA directly owns the infrastructure (i.e. the stone markers) and the agreements with each owner allow CNPA access to undertake “permitted tasks” (e.g. manage the markers and associated sites) and prevents land owners (the Occupier) from undertaking activities that would interfere with or compromise the markers. The Authority has entered into lease agreements which indemnify the Occupier to a maximum of £5 million in respect of claims arising from incidents arising from the Authority’s activities. The need for the Agreements was presented in the Expenditure Justification and associated papers that were considered by the Project Board, the CNPA Board and by Scottish Government.
4. For the 3 m granite markers there are nine agreements, at a total cost of £16200 for the period of agreement. For the smaller granite markers there are 15 agreements, at a total cost of £8800. All agreements are for ten years (with one exception of 5 years) and lump sum payments have been made to land owners. Each of the agreements was signed off by the Director of Corporate Services following a period of negotiation. See **Annex I** for further details.

Path Agreements/Path Orders

5. The CNPA has sought to improve outdoor access opportunities for people within the National Park and new paths and bridges, and upgrades of existing paths and infrastructure, are a key way to deliver this objective. The Land Reform (Scotland) Act 2003 makes provision for path agreements and path orders which can be used to secure the management, maintenance or creation of a route.

6. The Land Reform Act gives access authorities the power to enter into agreements with land owners for the “delineation, creation and maintenance” of a path. The Scottish Executive produced Guidance for Local Authorities which includes a standard template path agreement and this has been used as the basis for all the agreements that CNPA have entered into. In a number of cases the precise details have been strengthened considerably on advice from our legal advisers.
7. The template covers the following areas:
 - a) The parties to the agreement
 - b) The delineation of the path/bridge
 - c) The creation of the path/bridge
 - d) The management and maintenance of the path/bridge
 - e) Promotion of the path
 - f) Public rights of way
 - g) Reimbursement
 - h) Owners’ use of path
 - i) Liability
 - j) Other interested parties
 - k) Duration of agreement
 - l) Review of agreement
 - m) Termination of agreement
 - n) Post termination of agreement
 - o) Professional costs
 - p) Transfer of ownership and responsibilities
 - q) Arbitration
 - r) Registration
8. CNPA have three Section 21 path agreements in place:
 - a) The Strathdon Bridge – 20 year agreement with Sally and Charles Maybury. The bridge itself is owned by the Cairngorms Outdoor Access Trust.
 - b) The Old Logging Way (length 6km) – 30 year agreement with Rothiemurchus Estate
 - c) Duack Bridge and path, Nethybridge (length 300m) – 10 year agreement with Seafeld Estate
9. If an agreement cannot be reached with a landowner because they have an objection in principle to a route, and if there is an overriding public imperative, a Path Order can be made which, if successful, allows a route to be constructed against the wishes of a land owner. A Path Order gives the access authority the *duty* to maintain the route subsequently. This is the situation regarding the Speyside Way extension over Kinrara where CNPA has successfully placed a Path Order on land and has consequently has obligations and rights to undertake certain actions as a result. No works have been undertaken to date under the Order other than taking access to land to progress the planning of the project but bridges are due to be installed in the near future once planning permission is in place.

The Rationale for Path Agreements

10. In many cases, where access is already established on paths or tracks or only light-touch improvement work is being undertaken, agreements are not required by the land manager or the CNPA.
11. However, for more significant projects some form of agreement is commonly required. This typically happens when:
 - a) It is clear that a new path or bridge is of no benefit to the land manager;
 - b) The land manager is concerned about the extra burden of responsibility that would fall to them for new path or bridge on their land;
 - c) There is a benefit to both parties – CNPA and land manager – in clarifying responsibilities, and protecting investment in a capital bridge or path project;
 - d) To enable easier on-the-ground management of an asset by CNPA or its agent – for example taking a works vehicle onto land to undertake works or maintenance.
12. Agreements are more likely to be required when larger capital assets are involved and are used to clarify or re-define the management, maintenance and liability of that asset. Commonly the CNPA agrees to accept liability for actions, costs, claims and expenses which may be made against the Owner for reason of the construction, improvement, use or management of the structure, or its disrepair or structural failure. But the Owner remains liable for actions or claims for damage, injury or death which may be caused directly or indirectly through their respective fault or negligence. Generally, ownership of the asset or the land remains with the land owner in question.

General Issues for Discussion

Do We Need Agreements on Core Paths?

13. The Park Authority has a *duty* to draw up a plan for a system of paths sufficient to give the public reasonable access throughout the Park and in CNP this came into effect in March 2010. Designation of a route as a Core Path itself does not trigger a requirement for an agreement but some work on a core path might need an agreement for development and management to take place. Section 19 of the Act gives the Authority the *power* to maintain core paths (and keep them free from obstruction, and promote them) but this is a power rather than a duty. There is no extra legal duty that falls to CNPA to assume direct responsibility for core paths (or the wider path network for that matter) but we have made a corporate commitment to ensure that the path network is fit for purpose. To this end we monitor the core paths in the Park and secure mechanisms that mean they are cared for. This management activity may be through the land owners, the local authority, a path group, a community trust, the Cairngorms Outdoor Access Trust or by CNPA. The CNPA have **two** path agreements on core paths at the moment – GR9 the Old Logging Way and UDO5 Strathdon Bridge.

What Process Should We Go Through to Reach Agreements?

14. In general terms the system that has been used in the past is the preparation of an Expenditure Justification form. This allows a reasoned case to be made and all the implications to be considered. Any project where the capital cost and known on-

going maintenance cost over the life of the agreement exceeding £10,000 would automatically trigger consideration by the Finance Committee. Any project where the investment and maintenance cost is under £10,000 would be delegated to the relevant Programme Manager.

15. Where whole life project costs are concerned e.g. the Speyside Way Extension, if the aggregate costs of individual agreements totals more than £10,000 that should trigger the need for an Expenditure Justification form.

What are the Financial Implications of Agreements?

16. Agreements generally have some financial implications for the CNPA. These implications should be clear and considered before we enter into any agreement and should be set out in the Expenditure Justification form. Some financial implications can be hard to quantify – for example a cataclysmic event that damaged or washed away a path or bridge that CNPA had already invested in could leave the CNPA exposed in terms of the expectation of repair or replacement to the tune of thousands of pounds. Other financial implications are much clearer - for example the contract cost of an annual programme of upkeep for the Old Logging Way is unlikely to alter much apart from inflation costs over the life of an agreement.

Could Anyone Else Enter into Agreements?

17. A third party like a Community Trust or Development Company (but not a Community Council) can enter into an agreement with a land owner, and this does regularly happen (e.g. Strathspey and Seafeld Estates leasing land to Aviemore Community Enhancement Company for the Aviemore Community Park). However where bigger and more costly structures are involved (e.g. bridges) a land owner may be less willing to enter into agreements with an organisation or body whose future is not assured or underwritten in some way – hence CNPA's involvement as the direct party to the agreement.
18. There is now a degree of reluctance from our public sector partners (especially local authorities) to take on new capital assets or to enter into agreements for anything within the National Park relating to paths or access due to CNPA's responsibilities under the Land Reform Act.

What about Liability Insurance?

19. The Park Authority has no liability insurance. This is because the Public Finance Manual specifically instructs governmental and non-departmental public bodies against taking out insurance. However for each of the agreements made to date, the responsibilities that fall to CNPA - e.g. structural inspections, risk assessments, regular maintenance - have been incorporated into the work programmes of either CNPA staff, or our agents (e.g. COAT).

What is the Interplay between COAT and CNPA?

20. When COAT can easily reach an agreement with a land owner over a project, then they will generally be the direct party to that agreement. Assets associated with path works done by COAT independently of CNPA remain on COAT's books and CNPA has no responsibility for them. However, if lengthy negotiations are required, CNPA may become involved which frees up COAT's resource towards the

implementation of path and bridge projects. Sometimes a land owner may insist on a direct agreement with CNPA. COAT can however act as CNPA's agent for agreement in respect of ongoing maintenance, inspection or risk assessment.

Looking to the Future

Existing Speyside Way

21. CNPA now has lead responsibility to manage that part of the Speyside Way that lies within the Park. Some local authorities have extant agreements with land owners on the existing Speyside Way. CNPA refused to assume the mantle of responsibility for these at the point when we became the access authority and we have also generally refused to accept any automatic transfer of agreements at the time they expire. The local authorities therefore continue to carry the burden for their agreements but have indicated that they will not be renewing those they hold over land within the boundaries of the Cairngorms National Park. We could expect that land owners might feel exposed at this point and the CNPA could come under pressure to enter into agreements. We will need to approach these requests on a case by case basis.

Speyside Way Extension

22. The CNPA has a duty to implement the extension of the Speyside Way Long Distance Route to Newtonmore, a distance of some 22km. The proposed route will incorporate sections of new-build path, two new bridges across currently uncrossable watercourses, and one replacement bridge. The route will follow some existing tracks, paths and trods but the expectation is that many of these will be upgraded to provide a route that is fit for purpose as a Long Distance Route and to provide a functional route between communities.
23. It is likely that path agreements will be required where new sections of path need to be constructed. Negotiations began in 2009 but reached a hiatus when the Path Order over Kinrara was being pursued. Preliminary negotiations with most owners were going well up to 2010 and will be picked up as part of on-going work to take the extension forwards. There could be potentially up to 16 agreements.
24. Of particular note is that the route will pass through four sections of farmland where land will have to be taken out of productive grazing in order to facilitate passage of users, separation of people and dogs and livestock, and allow land management operations to continue unhindered. Where a section of land has to be taken out of production – e.g. fencing off a strip for a path in a stock field - it is likely that a compensatory payment will be required and an agreement entered into for the path. The CNPA have already been looking at a fair mechanism for making a one-off annualised payment for compensation, and this will be built into the eventual path agreement.
25. The section of path on Kinrara ground (including two bridges) fall under the Path Order so no further agreement will be required.

Core Paths Network

26. The 2010 Core Paths Plan identified 20 paths (excluding the Speyside Way and Speyside Way Extension referred to above) that require new build, or sections of new build – about 5.5km in total. These are shown below, along with current development status and who holds the agreement for paths and bridges completed:

	Community	CP no.	Description	Status	Agreement
1	Braemar	UDE9	Society Bridge to Glenshee Road	Completed	COAT
2	Glen Tanar	UDE4	Dinnet to Glen Tanar	Completed	COAT
3	Ballater	UDE28	Seven Bridges	Not completed	-
4	Ballater	UDE59	Dalmochie to Dinnet	Completed	COAT
5	Strathdon	UDO5	Bridge over Don and path to Lonach Hall	Completed	CNPA and COAT
6	Strathdon	UDO10	Bellabeg Circuit	Not completed	-
7	Tomintoul	GT17	Link Path	Not completed	-
8	Cromdale	LBS115	Cromdale to Balmeanach	Not completed	-
9	Grantown	LBS134	Horse Field Path	Not completed	-
10	Dulnain	LBS99	Riverside Path	Completed	COAT
11	Dulnain	LBS100	Ballintomb Wood path	Not completed	-
12	Aviemore	LBS30	Orbital path	In progress	Aviemore and Cambusmore Enhancement Company
13	Carrbridge	LBS63	Baddengorm	Not completed	-
14	Aviemore	LBS124	High Burnside	Not completed	-
15	Kingussie	UBS34	Loch Gynack to Newtonmore	Completed	COAT
16	Laggan	UBS16	Laggan to Balgowan	Not completed	-
17	Laggan	UBS17	Gergask Path	Not completed	-
18	Laggan	UBS18	Laggan to Gorstan	Not completed	-
19	Laggan	UBS20	Gorstan path	Completed	FCS
20	Laggan	UBS31	Drumgask to Catlodge	Not completed	-

27. As can be seen to date, COAT, as the implementing partner of CNPA in delivering the core path network, holds the lions' share of agreements and this is expected to continue. CNPA's liability for path and bridges infrastructure is a very small proportion of what is being delivered on the ground and the result of extensive and long considered negotiation where other options are not feasible.

Fran Pothecary
Murray Ferguson
February 2013

franpothecary@cairngorms.co.uk
murrayferguson@cairngorms.co.uk