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CAIRNGORMS LOCAL OUTDOOR ACCESS FORUM

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**Title:** Kincardine Estate – Access Signage

**Prepared by:** Adam Streeter Smith- Outdoor Access Officer

**Purpose:** To bring before the Forum for discussion and comment a paper on an unresolved access issue in Strathspey.

**Advice sought**

The CNPA wishes to seek the Forum's views on progress to date and the next steps to be considered.

**Background**

1. Kincardine Estate occupies a substantial strip of land sandwiched between the River Spey and the B970 approximately 3kms south of Boat of Garten. The principal activities on the estate are livestock farming, which is tenanted, and fishing. The estate was bought in the past three years by the present owners and a significant amount of capital has been invested in the estate.
2. The issue regarding new signage was brought to the attention of the CNPA on the 15 December 2005, when a member of the public reported unfavourable access changes taking place, namely the loss of an old river access track (now the drive to a new build property) and the appearance of several signs deterring legitimate access (see Appendix 1 which highlights the location and wording of the relevant signs.)
3. A site visit by CNPA staff concluded that access rights do apply in general to the areas where the public are being deterred. Whilst it is accepted that there are two privacy areas to which access rights would not apply (relating to the immediate vicinity of each property), access rights should extend to the remainder of the estate.
4. **The two issues to be resolved therefore are (A) what would be an appropriate course of action with regard to removing the existing signs that contravene access legislation and (B) what would be an appropriate course of action to take with regard to amending the signs that are not Code compliant.**

**Legal context**

5. The issue of signs deterring access is covered in Sections 14 of the Land Reform (Scotland) Act 2003. The relevant part of Section 14 that defines deterrents and obstructions to access states:
  - (1) *The owner of land in respect of which access rights are exercisable shall not, for the purpose or for the main purpose of preventing or deterring any person entitled to exercise these rights from doing so-*
    - a. *Put up any sign or notice;*

7. Under the Act the National Park Authority has a statutory duty to uphold access rights – that is to “...assert, protect and keep open from obstruction or encroachment any route, waterway or other means by which access rights may reasonably be exercised” (Section 13).
8. In order to carry out this function the Authority has several powers at its disposal to manage and uphold access rights including taking enforcement action. Notwithstanding these powers we have stressed that we are keen to work as far as possible with land managers and recreational users to develop solutions to issues by common understanding and collaboration.

### **Record of contact**

9. Initial contact was made with the estate on the 16 June 2006 via a letter in which introductions were made and the position of the CNPA was outlined.
10. On 26 July 2006 a meeting was held between the estate owner and CNPA staff. The meeting focused on land manager responsibilities as defined by the Act and discussed in detail the new signage and the use of alternative signage to manage access.
11. The CNPA wrote to the estate on the 3 August 2006 asking the estate to carry out actions to remove or replace the signage thus ensuring the estate was fulfilling their responsibilities. Advice was also given on a more appropriate signage format and the estate was directed towards the SNH Land Management signs. The estate responded in September 2006 notifying that they would be taking action to change the necessary signs.
12. In early December 2006, the position was:
  - One of the “Private no access” ④ signs had been removed, but another “Private no access” sign ⑧ remained at the southern end of the estate where access is gained to the riverside fields.
  - The two “Conservation Private no access” ① and ③ signs relating to the original complaint were still in place.
  - New signs were also in place:
    - ② “Kincardine Lodge, private house, please no access”
    - ⑤ “Croft of Kincardine, please no access”
    - ⑥ “Conservation Private no access”
    - ⑦ “Please keep dogs on leads and respect fisherman and their amenities”
13. A further letter from the CNPA on 27 March 2007 welcomed the positive change but reiterated concerns about the remaining existence of “Conservation area” signs ① and ③, and last “Private No access” sign ⑧, and requesting their removal. An offer was made to provide the SNH land management signs. The following modifications to other signage were suggested:
  - Sign ② “Kincardine Lodge only - for access to the river please use the path on the right”.
  - Sign ⑤ “Croft of Kincardine only”
  - Sign ⑦ “Please keep dogs under proper control and respect the fishermen and their amenities”

14. A reminder letter was issued on 2 May asking that the estate respond with a commitment to undertake the required actions by 31 July 2007 and stating that the Authority were considering referring the matter to the Local Outdoor Access Forum.
15. The estate responded by phone and discussed the matter with the Access Officer. A letter from the estate on 30 May outlined their intentions as such:
- Removal of the last remaining “Private No Access” sign ⑧
  - No alteration to the “Please keep dogs on a lead and respect fishermen and their amenities” sign ⑦
  - No alteration to the Croft and Lodge signs ② and ⑤
  - Review of the “Conservation area Private No Access” signs ①③⑥
16. A site visit in early July 2007 revealed that the last remaining “Private no access” sign had been removed but that the “Conservation” signs still remain. There have been no changes to the Croft and Lodge signs, nor dogs and fishing sign and no contact with the Estate since.

### **CNPA Position**

17. Progressive steps have been taken by the estate to remove the original “Private No Access” signs which did not relate to residential property. It is also recognised that due to development of the estate, the presence of two new residential dwellings has afforded the estate the opportunity to erect new signage vis-à-vis privacy issues. However the wording and positioning of these signs does not follow best practice.
18. Our concern has been the lack of progress by the Estate in removing the ambiguous “Conservation area Private No access” signs in the woodland.

### **Advice sought from the Forum**

19. There are two substantial issues (A) there are still signs in place that are a deterrent to access and (B) that there are now new signs that are not Code compliant. Before considering further actions available under Section 14 of the Land Reform (Scotland) Act, CNPA wishes to seek the Forum’s views on progress to date and the next steps to be considered.

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