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## CAIRNGORMS LOCAL OUTDOOR ACCESS FORUM

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- Title:** Dalwhinnie Railway Crossing: Closure by Network Rail
- Prepared by:** Adam Streeter-Smith, Outdoor Access Officer
- Purpose:**
1. To inform members as to the circumstances.
  2. To consider and agree the impact of closure on outdoor access.
  3. To prompt advice from the LOAF about the steps to be taken to find a suitable solution



### Background

1. Network Rail has closed the “private crossing” on the Inverness to Perth main line south of Dalwhinnie Station on the 28<sup>th</sup> of July. While CNPA is not entirely clear as to what precipitated this closure, we are aware the decision was taken by NR principally on health and safety grounds.
2. The closure process was conducted over an extremely short timescale with only 5 days between Network Rail notifying Highland Council of the intention to actioning the closure. CNPA was not consulted and Highland Council were the only party formally notified. Most stakeholders have observed that a) insufficient was time allowed for an understanding of the consequences to develop; and b) as a result, no preparations could be put in place such that likely problems might be avoided.
3. The closure has been accompanied by a proposed diversion, with signage, that involves walking along the A889 to use an underpass further south, a journey of approximately 1.5 miles.
4. Both the estate and the Community Council are firmly opposed to this closure as the crossing is seen as important for public access. Dalwhinnie Community Council is campaigning for the route to be re-opened.

5. The Highland Council are directly involved on the basis recorded Public Right of Way HB78 is affected and as such the Council are understood to be examining whether there exists a countermanding legal position in respect of their duties around upholding access to Rights of Way.
6. The issue has prompted considerable publicity at a national level, for example <https://www.bbc.co.uk/news/articles/cqn682ej3p3o>
7. Ramblers Scotland has initiated a campaign urging Network Rail to re-open the crossing. The online campaign has gained more than 5,000 signatures since its launch and is supported by many recreational user groups including Mountaineering Scotland, Cycling UL/Scotland and Scotways <https://www.ramblers.org.uk/news/latest-news/2021/august/statement-on-the-unacceptable-closure-of-dalwhinnie-level-crossing.aspx>

### Legal context

8. Land Reform (Scotland) Act 2003: The issues to do with rail crossings and outdoor access are complex and have been discussed before at National Access Forum, without necessarily finding a solution that can apply in all cases. Access rights do not apply to rail lines. Likewise nor does the Access Authority's powers to remove obstructions. Matters of public safety are of course paramount.
9. A legal review was prepared by the Scottish Law Commission and Law Commission. Members are directed to read Part 5 of the following document: [Joint Report on Level Crossings \(LC 339; SLC 234\) \(scotlawcom.gov.uk\)](https://www.scotlawcom.gov.uk/news/government-not-to-legislate-for-level-crossings-reform/) with key detail around interpretations of the LRA and railway crossings given on Pages 167 to 169 and thereafter to Page 174. In 2018 Ministers decided not to introduce legislation to implement the 2013 joint Report on Level Crossings. Instead, administrative changes were proposed that were in the spirit of the recommendations. <https://www.scotlawcom.gov.uk/news/government-not-to-legislate-for-level-crossings-reform/> . We will seek further clarity on these points as part of our review of the options available going forwards.
10. Rights of Way Designation: The route across the level crossing is recorded in CROW as right of way HB78. Scotways are currently checking the casefile, but it appears it was asserted by Perth & Kinross Council circa 1993; with the route going over the level crossing at Dalwhinnie.
11. Private Rights: Ben Alder Estates retains pedestrian and vehicular access rights over the crossing.
12. There is a core path up to the railway line boundary, UBS 35, that can be viewed on map 20 here [CorePathsPlanFinal150727.pdf \(cairngorms.co.uk\)](https://www.cairngorms.co.uk/CorePathsPlanFinal150727.pdf).

### **Implications for outdoor access**

There are several implications for access in the closure of this crossing:

13. The crossing forms part of “claimed” right of way ‘The Thieves Road’ towards Loch Ericht. (See [Heritage Paths - Search for Paths by Map](#))
14. There are cross boundary (CNPA and THC) core paths at this location.
15. It is the main access point for the nearby Corbett the Fara and provides for access to several popular Munros including Ben Alder.
16. It forms part of the Dalwhinnie Community Paths Leaflet- [Dalwhinnie Trails\\_screens \(cairngorms.co.uk\)](#)
17. Users would be expected to avoid the crossing and walk a further 1.5 miles – as described in section 3 above.

### **CNPA current position**

18. CNPA is disappointed not to have been consulted on this issue in advance of a decision being taken by Network Rail.
19. CNPA wrote to Network Rail on 12<sup>th</sup> August 2021 seeking further information on the closure and asking them to reconsider or find a more suitable alternative. We do not think current arrangements are satisfactory and there is risk that visitors will continue to use the crossing.
20. CNPA offered to facilitate a local meeting between interested partners.
21. CNPA invited NR to discuss the issue at the LOAF meeting on 25<sup>th</sup> August 2021 and to supply further information about the rationale, the options considered and alternatives going forwards. At the time of writing this paper a response was awaited.

### **Advice sought from LOAF**

22. Members are asked to consider and advise on:
  - The impact of closure on outdoor access.
  - Advise on steps to be taken to find a suitable solution

### **Proposed next steps**

- CNPA to press Network Rail to supply further information about rationale and options and confirm when they will meet with stakeholders.
- Further discussion with LOAF once further information becomes available

August 2021