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## CAIRNGORMS LOCAL OUTDOOR ACCESS FORUM

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- Title:** Insh Public Right of Way
- Prepared by:** Adam Streeter-Smith, Outdoor Access Officer
- Purpose:** To seek advice on whether a proposed new right of way in Insh meets the criteria of a right of way.

### Advice Sought

- a. Are the LOAF satisfied that the route meets the four essential criteria- subject to the public place links being fully established
- b. Are the LOAF content for the Highland Council to claim this route as a right of way?

### Background

1. The Cairngorms National Park Authority recently received a query from a member of the public residing at Insh on the legal status of a route adjacent to their property (see annex I). After meeting with them on site it was established that the route had no legal status concerning public access beyond those conferred by the Land Reform (Scotland) Act 2003.
2. Subsequently the resident would like to establish the route as right of way as the route would appear to meet the right of way criteria.
3. In establishing whether the route is a right of way the Highland Council (as planning authority) has powers to establish rights of way through compulsion and the means to defend them if necessary.
4. Before they instigate the process of claiming the right of way they would like a view from the LOAF on whether or not the route meets the essential criteria of a right of way.
5. For a route to be afforded right of way status it has to satisfy 4 essential criteria as follows:
  - a. The route must run from one public place to another public place:
  - b. The route must follow a more or less defined line:
  - c. The route must have been used openly and peaceably by members of the public otherwise than with permission, express or implied, of the landowner:
  - d. It must have been used without substantial and effective interruption for period of 20 years or more.

6. To establish if this route meets the four essential criteria a questionnaire was supplied to the resident to establish the base line facts. Table I shows the likely evidence for the route meeting the criteria from that questionnaire.

Table I Current right of way evidence

<b>Criteria</b>	<b>Evidence</b>
The route must run from one public place to another public place	Its starts on a public road and terminates on an existing track-here would appear to be an unrecorded right of way here (evidenced by a green and white Scotways signs). The route by extension does link to HB80 that runs along the back of Insh
The route must follow a more or less defined line	The route follows an existing vehicle track
The route must have been used openly and peaceably by members of the public otherwise than with permission, express or implied, of the landowner	The route has been used by the public without land owner permission
It must have been used without substantial and effective interruption for period of 20 years or more	The route has been used by the resident and the public from 1965 to 2014.

7. As can be seen from the table in the most part the route meets the criteria except where it joins two public places. In taking this forward are the LOAF:
- a. **Satisfied that the route meets the four essential criteria- subject to the public place links being fully established**
  - b. **Content for the Highland Council to claim this route as a right of way?**

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