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## CAIRNGORMS NATIONAL PARK AUTHORITY

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### FOR INFORMATION

**TITLE:** MONITORING AND ENFORCEMENT IN THE  
CAIRNGORMS NATIONAL PARK 2013/2014

**PREPARED BY:** Bruce Luffman, Monitoring & Enforcement Officer

#### **Purpose of Report**

To report on the monitoring and enforcement activities for the 12 month period up to October 2014.

#### **Summary**

There is a requirement under our Service Standards within the CNPA Enforcement Charter to bring a written report annually to the Planning Committee, outlining the nature and extent of enforcement activity. No changes are proposed to the Enforcement Charter at this time.

Monitoring and enforcement is a diverse area of activity which plays a key role in the Planning Service within the Park, ensuring there is compliance with decisions that have been taken. This paper seeks to inform the Planning Committee of what has been achieved over the last 12 months and looks forwards to changes in reporting and review arrangements.

#### **Recommendation**

##### **That Members:**

- a) **Note this report for information.**
- b) **Note that the timetable for report to Committee and review of Charter will be changed to conform with the Planning Performance Framework timetable.**

## **PLANNING MONITORING AND ENFORCEMENT IN THE CAIRNGORMS NATIONAL PARK 2013/2014**

### **Background**

1. A Planning Enforcement Charter is required for all planning authorities by the Planning etc. (Scotland) Act 2006. The Scottish Government's Planning Performance Framework requires that the Charter is reviewed at least every two years. CNPA works in partnership with the five local authorities in the Park and each has its own Enforcement Charter covering their respective geographic areas and activities.
2. The CNPA Charter was originally approved by the Planning Committee in June 2009 and a review was last undertaken in October 2013. There have been no changes in the enforcement legislation since the last review and no changes are proposed to the Charter at this time. The Charter has been widely distributed and promoted throughout the Park and is available on the CNPA website.
3. The Charter sets out the procedure and actions to be undertaken by CNPA and provides a summary of the enforcement powers that are available. Throughout the Charter there are a number of Service Standards that are required to be achieved and one of the most important is the requirement to respond to any person who has made a comment or complaint within five working days.
4. This report covers the 12 month period up to October 2014 as part of an annual cycle of reporting that was started some time ago. The figures for the Scottish Government statistics on enforcement are collected by financial year (e.g. from April 2013 to March 2014) and are reported separately through Planning Performance Framework report.

### **Overview of activities**

5. An illustrated presentation with an overview of enforcement and monitoring activity will be given at the Committee meeting. Table 1 shows that the number of issues raised by members of the public has been maintained in the year April 2013 to March 2014 and it seems that the public have a good awareness of the CNPA enforcement service and are readily responding by notifying the MEO of their concerns.

Table 1:

	2013/2014	2012/ 2013
Members of Public	25	25
CNPA Board & Staff	9	5
LAs, CCs and Monitoring visits	7	9

6. The role of Monitoring and Enforcement Officer requires a high degree of contact and good working relations with developers, agents, architects, land managers and community groups. Members of the public play a vital role in reporting concerns about activities and possible breaches of planning control. The Officer has met with a number of groups over the year, including the Community Council Planning Representatives Network.
7. During the period covered by this report there have been 61 (59) separate incidents or reports that have been investigated and a log with a brief description of each incident can be found at **Appendix I**. Of those incidents, 38 (38) did not relate to a planning application that the CNPA had called in (i.e. there was no application and so is a potential unauthorised development.). A number of interesting trends can be highlighted. The list only highlights instances in which there may have been a problem. Many routine monitoring visits do not provide an issue that needs looking into and are therefore not noted on this list.
8. There have been three Planning Contravention Notices (PCN) issued in the past 12 months. A PCN is primarily a formal method of gathering information and is seen as the first line of approach in a possible enforcement action. The first PCN was served in October 2013 on a shooting tenant on the Dinnet Estate in Aberdeenshire concerning the extensive unauthorized works on hill tracks on the estate. A further two PCNs were served in September 2014 on the same shooting tenant and the owner of Dinnet Estate following further investigations. A further report will be brought to the Committee on this issue in due course.
9. Unauthorized tracks, and particularly hill tracks, have been a cause of continuing concern and the MEO has spent considerable time investigating concerns from members of the public. The recent Minister's announcement about introducing a system of prior notification is welcome and discussions are under way about how to implement it effectively within the Park through use of a protocol with the respective local authorities. This should be in place early in 2015.

10. There have been some changes to the system of enforcement officers working across the Park within the last year. The local authorities of Aberdeenshire, Angus, Moray and Perth and Kinross have had dedicated MEOs or planning inspectors for some time. Aberdeenshire Council is currently recruiting an officer for the Marr area and Angus Council is considering replacement of an experienced MEO. The Highland Council has recently recruited two new MEOs, based in Inverness, for the whole Highland Council area. The Badenoch and Strathspey area also have a support officer at Kingussie with some enforcement experience who is mostly employed on the validation of planning applications. This is a particularly welcome development as the western part of the Park experiences the highest proportion of development activity. The issue of how the various officers work together when there has been a possible breach of planning control, has improved over the year because the officers have developed good working relationships.
11. Non-compliance with the conditions of a Decision Notice has been common throughout Scotland and particularly with suspensive conditions where there is a requirement to do something “prior to the commencement of development”. Developers require to pay due regard to suspensive conditions and in our experience this is not always the case. As a planning authority we have to be aware of the consequences of using such conditions – if they are over-used they can stimulate the need for a higher intensity of monitoring activity and a slowing down of the commencement of the development. Thorough pre-application discussions and a positive approach to providing the required information by the applicant will help to avoid the need for such conditions and accelerate the start of development.
12. In planning enforcement a great deal of negotiation, persuasion and interpretation takes place to achieve a positive outcome and, whilst this can be time-consuming, invariably it provides a better and cost effective outcome than the formal enforcement notice route. However, the threat and need for legal enforcement notices remains a necessary tool, particularly where there have been breaches of planning control such as damage to a Listed Building or by an uncooperative developer.
13. CNPA staff do not have delegated powers to serve Enforcement Notices and currently require approval of Planning Committee. This system is working reasonably well. It was agreed by the Committee in 2011 to establish a system of delegation for serving a Temporary Stop Notice (TSN) where speed of service to stop an activity may be paramount. It was agreed that the Convener and Deputy Convener of the Planning Committee can decide in conjunction with the CNPA Head of Planning to authorise the serving of that Notice. This arrangement will be consolidated as part of a comprehensive

Scheme of Delegation for planning which is in hand. The only TSN so far served was in September 2011.

### **Looking to the future**

14. Since August 2012, the MEO has worked three days a week following the officer reaching 65 years of age. It is anticipated that the officer will retire in the next financial year.
15. The agreed actions in the Service Improvement Priorities for this year are:
  - Review Enforcement Charter and investigate greater integration of enforcement between CNPA and five Councils;
  - Establish plan for Enforcement Officer role from July 2015.
16. This work is in hand and officers are working towards provision of an Enforcement Charter for the National Park, rather than for CNPA as an organization. This would provide an overview for customers, with contact details for the respective authorities and how they work together. This is an issue to be progressed in discussion with each of the authorities within the next few months.
17. In order to avoid duplication of effort we intend to produce one Monitoring and Enforcement report for the Committee annually, by financial year, to accompany the PPF annual report. As explained in the PPF Report Committee paper the timing for this is under review by Scottish Government but is expected to be around June/ July of each year.

**Bruce Luffman**

**September 2014**

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