

## CAIRNGORMS NATIONAL PARK AUTHORITY

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### **DEVELOPMENT PROPOSED:**

Retrospective planning application to retain a ski area access track at Cairngorm Mountain, Glenmore, Aviemore, Highland, PH22 1RB

**REFERENCE:** 2016/0295/DET

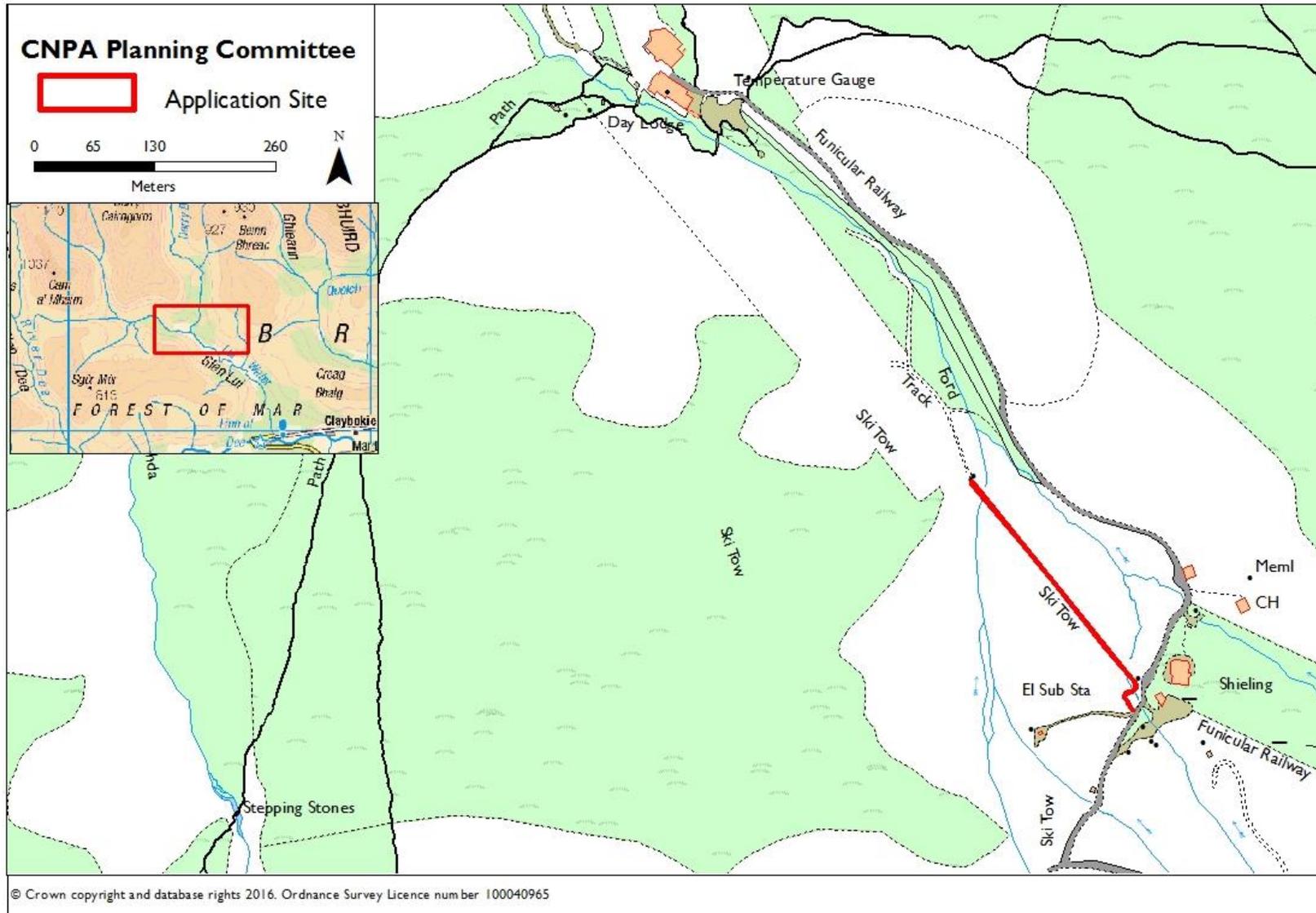
**APPLICANT:** Mr Jim Cornfoot, Cairngorm Mountain Ltd

**DATE CALLED-IN:** 11 August 2016

**RECOMMENDATION:** Approve

**CASE OFFICER:** Katherine Donnachie, Planning Officer

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## SITE DESCRIPTION, PROPOSAL AND HISTORY

### Site Description

1. The site lies at the Shieling Tow mid station on Cairngorm Mountain in the middle of the ski centre. It is located to the west of the funicular railway leading up the mountain to the Ptarmigan restaurant on the top of Cairngorm.
2. It comprises sloping land located beside the recently constructed replacement Shieling tow and covers a length of around 270 metres leading from the foot of the tow southwards up to the mid station. The location of the site and its environs are shown on plans contained in **Appendix I**.
3. The application site lies within a National Scenic Area, but is not covered by any other specific environmental designations.

### Proposal

4. The drawings and documents associated with this application are listed below and are available on the Cairngorms National Park Authority website unless noted otherwise:

<http://www.eplanningcnpa.co.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=OBR7DTSI0BY00>

Title	Drawing Number	Date on Plan	Date Received
Location Plan 1:1000 scale		Undated	11.08.16
Location Plan 1:50,000 scale	Drawing 1	Undated	11.08.16
Old Track cutting embankment section locations	Drawing 2	Undated	13.12.16
Shieling Access Track	Drawing 3	Undated	13.12.16
Landscape Plan	Drawing 4	Undated	13.12.16
Shieling Planting Plan	Drawing 5	Undated	13.12.16
Visualisations of scalloped edges	Drawing 6	Undated	13.12.16
Background Landscape and Access overview	Drawing 7	Undated	13.12.16
Visualisation of Planting	Drawing 9	Undated	13.12.16
Section X- X- Proposed Ground Scalloping	Drawing 10	Undated	13.12.16

Section Z-Z ski lift top get off ramp	Drawing 11	Undated	13.12.16
Sections A-A and B-B lower loop path	Drawing 12	Undated	13.12.16
Section C-C lower loop path	Drawing 13	Undated	13.12.16
Section EE and DD Borrow pit and corner widening	Drawing 14	Undated	13.12.16
Section F-F, I-I and J-J lift line	Drawing 15	Undated	13.12.16
Section I – I and J – J lift line	Drawing 16	Undated	13.12.16
Site Plan		Undated	13.12.16
Management and Piste Landscaping		Undated	13.12.16
Drawing of Terrain		Undated	11.08.16
Sun Kidd Comfort Star Drawing		Undated	11.08.16

\*Where no specific day of month has been provided on the plan, the system defaults to the 1<sup>st</sup> of the month.

5. The application seeks retrospective consent to retain an access track which was formed during the construction of the replacement Shieling tow. The applicants advise that the reason for the construction of the track was to minimise tracking over the surrounding area, which has deep peat cover, and to create a safe route which ensured that access did not cross the high voltage SSE ring main cable. They now wish to retain the track, explaining that it is an investment that will allow routine maintenance and minimise ground disturbance to the surrounding ski pistes in the future, thus reducing the need for vehicle access over undisturbed land.
6. The track runs largely parallel to the new ski tow, with the funicular railway running roughly parallel to the east. The final width is proposed to be around 2 metres and the track is around 270 metres long with a series of steel drainage channels proposed to cross the track, together with sedimentation ponds to provide for drainage of the track. It is also proposed to have provision for a turning circle at the foot of the track to enable three point turns to take place.
7. The applicants have explained that as the track and turning provision is intended for occasional use it should become more vegetated over time. It is required for maintenance and operational use.
8. Also shown in the application is re-profiling undertaken to an embankment which had originally formed in the 1960s located beside the lower loop path leading to the day lodge, lying to the north of the track. The applicants advise

that material from the banking was used to create the base for the new ski lift with the opportunity taken to re-grade the bank to a more natural gradient.

9. Supporting information has been provided to show final profiles and sections of the works together with proposals for landscaping around the site and an indication of wider landscaping proposals at Cairngorm Mountain. These plans are attached as **Appendix I**. Section X-X shows the proposals for small hand dug groundworks to create a more natural effect at the base of the ski tow whilst sections Z-Z indicate long term proposals for fill at the top of the tow to create a gentler profile. Sections A-A to D-D show the works carried out to the embankment beside the lower loop path.
10. A management and piste landscaping report has also been submitted outlining the work to date to create the track and landscape, including details of seed mixes. This explains that similar reinstatement/vegetation techniques as those employed for the funicular railway have been used, including the use of a pelleted cellulose mulch which improves regrowth and seeding by stabilising soils and retaining water during dry spells. Hydro seeding mulch was used to seed the drainage ditch and at the base of the ski tow. The report states that this work has taken well and it is proposed to continue to monitor it.
11. This report also includes a landscape/planting plan for the site and its immediate environs. This proposes planting with native species this year with the aim of increasing the number of broadleaf trees around the site to improve diversity of future tree cover, based on a one metre grid with planting plugs to create the desired mountain woodland scrub. The planting mix is based on experience to date on the mountain in terms of success of species and proposes to use alder as a nurse species to promote growth of other trees such as aspen, birch and willow. Heather brashing is also proposed to improve areas of wet peat. This involves cutting heather and spreading it on bare areas to help establish heather cover on bare ground. This technique has been employed successfully elsewhere on the mountain.
12. It is proposed to monitor the landscaping works after each growing season for the next three years in consultation with the CNPA and thereafter for a longer period if required. The report includes proposals for annual monitoring meetings with CNPA staff on site to monitor progress. The landscape report also references proposed planting in the wider area of the ski resort.

## History

13. 2014/0251/DET – Full planning permission was granted at the November 2014 meeting of the Cairngorms National Park Authority (CNPA) Planning Committee for the removal of the Shieling ski-tow and replacement with a modern rope-tow of similar length and profile on this site beside the funicular railway at Cairngorm Mountain at the Shieling mid station. The approved construction method statement set out how works would be undertaken to minimise disturbance and to secure reinstatement of a previously bulldozed track here. The application also set out that the existing tracks would be used to implement the permission.

14. Work did not proceed on site in accordance with this permission. An access track was formed for construction purposes without prior planning permission.
15. When this matter was brought to the attention of the CNPA, the applicants were advised in November 2015 that the works were unauthorised and the track should be removed and the ground should be reinstated. The applicants were also advised that a planning application would be required if they wished to retain the track and that work should cease until these matters were concluded. The applicants carried out some remedial works to the banking and decided that they wanted to retain the track for the reasons outlined in the Proposal section of this report. They therefore proceeded to work on that submission and submitted the current retrospective application.
16. There have been numerous other planning applications on Cairngorm Mountain over the years for various infrastructure, that are not relevant to the determination of this application.

## **DEVELOPMENT PLAN CONTEXT**

### **Policies**

<b>National Policy</b>	Scottish Planning Policy 2014	
<b>Strategic Policy</b>	Cairngorms National Park Partnership Plan 2012 - 2017	
<b>Local Plan Policy</b>	Cairngorms National Park Local Development Plan (2015) Those policies relevant to the assessment of this application are marked with a cross	
POLICY 1	NEW HOUSING DEVELOPMENT	
POLICY 2	SUPPORTING ECONOMIC GROWTH	X
POLICY 3	SUSTAINABLE DESIGN	X
POLICY 4	NATURAL HERITAGE	X
POLICY 5	LANDSCAPE	X
POLICY 6	THE SITING AND DESIGN OF DIGITAL COMMUNICATIONS EQUIPMENT	
POLICY 7	RENEWABLE ENERGY	
POLICY 8	SPORT AND RECREATION	X
POLICY 9	CULTURAL HERITAGE	
POLICY 10	RESOURCES	X
POLICY 11	DEVELOPER CONTRIBUTIONS	

17. All new development proposals require to be assessed in relation to policies contained in the adopted Local Development Plan. The full wording of policies can be found at:

<http://cairngorms.co.uk/uploads/documents/Park%20Authority/Planning/LDPI5.pdf>

## Planning Guidance

18. Supplementary guidance also forms part of the Local Development Plan and provides more details about how to comply with the policies. Guidance that is relevant to this application is marked with a cross.

Policy 1	New Housing Development Non-Statutory Guidance	
Policy 2	Supporting Economic Growth Non-Statutory Guidance	X
Policy 3	Sustainable Design Non-Statutory Guidance	X
Policy 4	Natural Heritage Supplementary Guidance	X
Policy 5	Landscape Non-Statutory Guidance	X
Policy 7	Renewable Energy Supplementary Guidance	
Policy 8	Sport and Recreation Non-Statutory Guidance	X
Policy 9	Cultural Heritage Non-Statutory Guidance	
Policy 10	Resources Non-Statutory Guidance	X
Policy 11	Developer Contributions Supplementary Guidance	

## CONSULTATIONS

19. A summary of the main issues raised by consultees now follows:
20. **Scottish Natural Heritage** was consulted on the previous application for replacement tow here and had no comments, noting that the site lay out with any designated sites and was unlikely to either directly or indirectly affect any interest which SNH led on.
21. **CNPA Ecology Advisor** noted from a site visit that there was evidence of erosion on the track which may be addressed by the applicants' plans to install metal water bars together with grass seeding. It has also been noted that the applicants have created a drainage channel at the side of the track with drainage bars, to slow down the speed of flow and keep water away from the track. Sediment capture ponds at the end of each culverted pipe will help prevent siltation of the Allt Choire Chas burn.
22. It was further noted that restoration works associated with the construction were satisfactory. The officer recommended that a management plan be provided to ensure that the restoration progresses well covering matters such as re-seeding of bare patches, management proposals for the sediment ponds and taking the opportunity for planting of native species.
23. On receipt of further information from the applicants, the officer is now satisfied that vegetation is establishing well in the disturbed areas and the re-grading of the slope will be beneficial for insects and vegetation establishment. The planting plan is also considered to be satisfactory, with the suggestions of annual site visits to inspect the site for vegetation establishment, planting proposals and proposed monitoring of erosion over the next three years noted.
24. In relation to specific habitat and water vole issues raised by the objectors, the officer has advised that there are no particular concerns in this regard and that

the creation of sedimentation ponds may improve habitat for water vole ultimately. The Officer noted that water voles are active in the ski centre area especially close to the car park. They are vulnerable to flooding and will avoid areas prone to spatey floods where their burrows are vulnerable to flooding and erosion which is the case around the channel crossing the track. The drainage measures are more likely to improve the situation in the tow area with the creation of the sedimentation ponds having potential to allow colonisation of rushes and sedges which they feed on.

25. **CNPA Landscape Adviser** initially highlighted that at both ends of the track the tow pylons were installed at a higher level than the surrounding ground creating an unnatural looking landform which is clearly visible and would have a negative impact on visitor experience. The track itself was considered to be acceptable within the landscape, comprising a short stretch of track level with the surrounding ground and vegetated with initial growth. It was considered that this would provide organic matter, which along with proposed drainage channels, would further prevent erosion.
26. The officer recommended that further consideration be given to regrading landforms at either end of the tow to create a more natural landform with plans and specifications detailing this sought.
27. Further information has been provided by the applicant showing how scalloped edges will be hand dug at the lower end of the tow and highlighting the potential for future regrading at the top end of the tow along with landscaping proposals. The officer has confirmed that the planting proposals are satisfactory and that the information provided gives confidence that the issues raised initially regarding landform and fit with landscape may be resolved. The officer has also highlighted the importance of a high standard of work being delivered.
28. **CNPA Outdoor Access Officers** note that as the track is to be retained as a permanent feature it will be accessible to the visiting public outwith the ticketed ski-season whereby access rights will apply, as they do with other tracks on the ski slopes. The track's location means that it may become used as a circular route from the Day Lodge which again may not be dissimilar to other tracks on the mountain. It is recommended that this be highlighted to the applicant along with the need for them to ensure this is taken into account when they are planning seasonal maintenance with measures taken to close the track to visitors during such times.
29. **Aviemore and Vicinity Community Council** has been consulted and no response has been received to date.

## REPRESENTATIONS

30. Twenty representations have been received. Seven support the application and thirteen raise objections to it. These are attached as **Appendices 2 (a) and (b)**. Three parties; Alan Bratney, Badenoch and Strathspey Conservation Group

and the North East Mountain Trust have requested to be heard at Committee as have the applicants.

31. Key points raised by supporters of the development relate to:

- a) The works have improved the appearance of the area, removing a poorly drained gully type area which did not fit into the landscape
- b) Track provides for essential access for maintenance and servicing in this important low level skiing area, and avoids damage from multi access routes
- c) Works improve safety at the centre
- d) Planting carried out in surrounding area is evidence of environmental commitment here
- e) Development to facilitate availability of this area is important particularly when higher areas are snowbound or occupied. Viable ski area important to local economy and surrounding communities
- f) Reinstatement to date is of a good standard.

32. Key points raised by objectors are as follows:

- a) Lack of environmental responsibility displayed by carrying out works without planning permission in area of environmental sensitivity, where public interest is high and public bodies have invested monies. There are other examples of this lack of regard throughout the ski centre area.
- b) Construction of track and works to banking arose from not following approved construction method statement and has created visual, ecological and drainage issues from erosion
- c) Environmental damage on habitats and species including water voles, invertebrates, fungi and bees which have not been considered fully.
- d) Track has not been constructed in accordance with SNH guidance for upland tracks and design is not appropriate for the location. It does not follow contours, cuts up slope and creates adverse drainage and landscape impacts in an area which is readily visible from wider area, creating a prominent linear feature
- e) Track should be removed and ground reinstated appropriately in accordance with an independent survey of works required
- f) Primary aim of National Park to protect and enhance natural heritage has not been met and high quality of montane environment has not been recognised in ecological work
- g) No justifiable grounds for new visually intrusive track with insufficient information provided to demonstrate why the track is needed. A detailed commentary on why it is considered unnecessary to have this track has been provided by the objectors. This highlights the unauthorised works and environmental damage that took place to create the track
- h) Other infrastructure on the mountain is maintained without the need for new tracks
- i) Query whether the need for the track is simply to avoid the costs of removal
- j) Submission is misleading in terms of information submitted
- k) Wider area is in poor condition and this should not be added to by constructing new tracks

- l) Approval of this application sends out a message that work does not require to follow approved plans which is not acceptable in a National Park
  - m) Wider issue of hill tracks being constructed without necessary permissions which are blighting Scotland's upland landscapes and there is need for more robust approach by Planning Authorities and to only approve retrospective consent in exceptional circumstances. It is not considered that the current submission is an exception.
  - n) Concern raised that further damage would be caused if the track were to be reinstated hence raising the issue that not complying with planning regulations results in a fait accompli.
  - o) Should the application be supported conditions should be attached to ensure landscaping and drainage mitigation to highest standards
  - p) Request site visit by Committee to view the site prior to decision.
33. The applicants have provided a response to the objections which is attached as **Appendix 3**. This sets out in detail the applicants' response to matters raised.

## APPRAISAL

### Principle

34. Local Development Plan Policy 2: Supporting Economic Growth seeks to support development which enhances formal and recreation and leisure facilities providing; there are no adverse environmental impacts, it makes a positive contribution to the experience of visitors, and it adds to or extends the core tourist season. Policy 8: Sport and Recreation also seeks to support diversification or extension to existing sport and recreation related business activities. National planning policy as contained in Scottish Planning policy similarly seeks to promote business development which increases economic activity whilst also safeguarding and enhancing the natural environment.
35. In this regard the principle of the development, which is related to the operation of a long established ski centre, generally complies with policy providing environmental impacts are acceptable. The proposal is related to the efficient operation of a ski tow which in principle is beneficial to visitors, providing impacts on the environment are acceptable. As such, the principle of development is considered to comply with planning policies provided that there are no adverse landscape, environmental or technical servicing impacts. As there are no particular servicing issues with this proposal which does not impact on the public road network or services, it is the landscape and environmental impacts which are the key land use planning issues in this case along with public access. These matters are now considered in more detail.

### Landscape Impacts

36. Policy 5: Landscape of the Cairngorms Local Development Plan seeks to ensure that new development conserves and enhances the landscape character and special qualities of the National Park.

37. Whilst the application site is located within the National Scenic Area and in a mountain location, it is also located within a working ski centre which contains a variety of infrastructure and disturbed land associated with the operation of this economic asset. The previous planning permission for a replacement tow secured some landscape improvement by the removal of a bulldozed track which had the appearance of a “gulley” creating an unnatural landform here. The removal of the gulley areas were carried out when the tow was installed, and at the same time this new track was created.
38. Whilst the track introduces another manmade element into the landscape, it is considered that the construction of the track itself, its profiles, verging and seeding in the middle of the track help it to fit into the landscape in an acceptable manner which with good management will improve over time. In terms of the ground works near the foot of the track to regrade an embankment works, it is considered that these have resulted in a more natural profile to the embankment which is of benefit to the landscape.
39. The main landscape impact of the development relates to the groundworks at the top and bottom of the track where the ground has been profiled to achieve ease of access to and from the ski tow. This has resulted in rather unnatural profiles in places.
40. Following discussion with CNPA officers the applicants propose to achieve a more natural fit into the surrounding landscape by hand digging the lower slope beside the attendant’s hut to create a “scaloped” effect more in keeping with the natural heather landscape here. At the top of the slope they have indicated that, as they do not import new material to the hill for environmental reasons, if material becomes available on the hill as a result of other authorised operations this could be used to re-profile the slope slightly along with proposed planting which over time will mitigate the impacts. The applicants have prepared a landscape plan, including management and monitoring measures which will also help ensure that the landscaping is properly implemented and in the event of the application being supported appropriate planning conditions can be imposed to this end.
41. These measures are considered sufficient to ensure that the development fits into the landscape and over time will enhance the landscape as required by Policy 5.
42. Finally, in relation to landscape impacts, the development is not considered to impact adversely on wild land due to its location within the ski resort and the nature of the surrounding area.

### **Environmental Impacts**

43. Local Development Plan Policy 4: Natural Heritage seeks to ensure that new development does not adversely affect the quality of the environment or species. Policy 10: Resources seeks to ensure that new development avoids unacceptable detrimental impacts on the water environment. The proposals have been fully

assessed with regard to any significant impact upon habitats and species by CNPA officers and it is considered that there are no adverse ecological impacts. There is also potential, as result of the proposed landscaping together with the formation of sedimentation ponds, for surface water drainage to improve biodiversity. As such the application is considered to comply with Policy 4 and 10.

### **Public Access Issues**

44. As noted by the CNPA Outdoor Access Team the retention of a track means that the public can potentially exercise access rights over it. This is in compliance with Local Development Plan Policy 3: Sustainable Design which seeks to ensure that all opportunities to maintain and maximise opportunities for responsible outdoor access.
45. The applicants noted in their landscape management material that they do not intend for the track to become a short cut for walkers outwith the winter season and intend to use signage to reinforce this and avoid trampling of proposed planting by walkers. Any restriction on access rights would not be in line with access rights requirements and it is recommended that the comments of the Outdoor Access Officers regarding the need to make provision for public access outwith seasonal maintenance times be highlighted to the applicants via an informative attached to any permission in the event of the application being supported.

### **Other Issues Raised in Representations**

46. Matters raised relating to landscape, ecological and drainage issues are covered within the report.
47. In terms of objections raised regarding the need for the track, Local Development Plan policy supports in principle the extension and diversification of existing operations. Objectors have raised the issue of no need being demonstrated for the retention of the track. In this regard it is generally considered, in the context of a track within an existing long established ski resort that the party best placed to determine the operational needs of their business are the applicants. In any case, the need for the track is not required to be demonstrated as it is not a requirement of policy. The role of the Planning Authority is to consider the land use impacts and merits of the proposal, assessed against policy.
48. Objectors have raised concerns regarding the wider implications of this application in terms of the authorisation and retention of other unauthorised hill tracks. Whilst CNPA shares the objectors' concerns regarding the construction of unauthorised hill tracks and will pursue appropriate enforcement action as required in this regard, it is not considered that the approval of a retrospective application for a track within an established ski centre is directly comparable. Each case must be considered upon its own merits and specifically related to the significance of any harm being caused. In this case, whilst it is regrettable and

indeed unacceptable that the applicant constructed the track prior to gaining permission, sufficient mitigation is being proposed for the landscape impacts associated with the current application which is clearly related to existing operations with landscape and environmental impacts being fully considered.

49. Objectors have also raised concern regarding the breach of planning controls at this site. As with any retrospective planning application the key matters to be considered are the land use merits of the proposal not the fact that it is retrospective. The planning system is not intended to be punitive with Planning Authorities required to consider all applications on their planning merits. If the development were deemed to be unacceptable it would be recommended for refusal and subsequent enforcement action considered regardless of the fact that the track exists. It is not considered that approval of this application would have any implications for other hill tracks beyond emphasising the need for tracks to be constructed to comply with relevant planning policies.
50. Similarly, whilst the concern of objectors regarding the appearance and maintenance of the wider ski centre is noted this is not a reason to refuse an application on one part of the site when that component in itself is considered to be satisfactory. As with all retrospective applications, there will be a need for ongoing monitoring of the site to ensure compliance with conditions and that no further unauthorised developments take place.

## CONCLUSION

51. Within the context of its setting, the development of a track associated with an existing ski resort operations is considered to fit appropriately into the landscape, subject to appropriate mitigation by way of landscaping and limited re-grading works as shown in the submission. There are not considered to be any particular adverse environmental impacts with the drainage and landscape arrangements offering opportunities for enhancement of biodiversity interests.
52. Accordingly, the development is considered to comply with all relevant policies as contained in the Cairngorms National Park Local Development Plan 2015. The proposed mitigation can be secured by means of planning conditions and approval is recommended on this basis. There are not considered to be any material planning considerations to outweigh this conclusion and to justify refusing this application for retention of an access track.

## RECOMMENDATION

**That Members of the Committee support a recommendation to Approve the Retrospective planning application to retain a ski area access track at Cairngorm Mountain, Glenmore, Aviemore, Highland, PH22 IRB subject to the following conditions:**

Those conditions listed below in bold text are suspensive conditions, which require to be discharged prior to implementation of the development.

## Conditions

- I The landscaping, drainage, groundworks and planting detailed in the approved Management and Piste Landscaping document shall be implemented by May 2018 and thereafter maintained and monitored in accordance with the approved details contained in this document, the approved Shieling Planting Plan Drawing 5 and approved sections.

Annual monitoring reports (including details of, and timetable for, any further work/mitigation required) shall be submitted for approval to the Cairngorms National Park Authority (CNPA) acting as Planning Authority by every October following the date of this permission for an initial three year period. The period of submission of any ongoing monitoring shall be determined thereafter by the CNPA. All work shall be implemented in accordance with the recommendations and timetable within the approved monitoring reports.

Reason: To ensure that the track and associated ground works conserve and enhance the landscape and avoid detrimental impacts on the water environment in accordance with Policy 5: Landscape and Policy 10: Resources of the Cairngorms National Park Local Development Plan 2015.

## Informatives

- I Notification of Completion of Development - Following the completion of the development in accordance with the approved planning conditions, a notification of the completion shall be given to the Planning Authority. Attached to this decision notice is a Notice of Completion of Development for completion and submission. Submission of this form will assist the Cairngorms National Park Authority Monitoring and Enforcement Officer in making a final inspection and checking compliance with the approved drawings and conditions.
- 2 You are advised that access rights apply, as they do with other tracks on the ski slopes. The track's location means that it may become used as a circular route from the Day Lodge and you should take this into account when you are planning seasonal maintenance with appropriate measures taken to close the track to visitors during such times.

The map on the first page of this report has been produced to aid in the statutory process of dealing with planning applications. The map is to help identify the site and its surroundings and to aid Planning Officers, Committee Members and the Public in the determination of the proposal. Maps shown in the Planning Committee Report can only be used for the purposes of the Planning Committee. Any other use risks infringing Crown Copyright and may lead to prosecution or civil proceedings. Maps produced within this Planning Committee Report can only be reproduced with the express permission of the Cairngorms National Park Authority and other Copyright holders. This permission must be granted in advance.