

AGENDA ITEM 7

APPENDIX 2A

2019/0040/MSC & 2019/0041/MSC
(HALF BARRIERS)

SUPPORTING INFORMATION

General Register of Sasines

Extract Registered 26 FEBRUARY 2019

AGREEMENT

BETWEEN

**CAIRNGORMS NATIONAL PARK
AUTHORITY**

AND

**TRUSTEES UNDER DEED OF TRUST
BY THE HONOURABLE JAMES
ANDREW OGILVIE-GRANT,
VISCOUNT REIDHAVEN**

Deed extract



**Registers
of Scotland**

Registers of Scotland

The Writ hereinafter reproduced is recorded in the General Register of Sasines for publication and also as in the Books of the Lords of Council and Session for preservation And execution as follows:-

REGISTERS OF SCOTLAND
GENERAL REGISTER OF SASINES
COUNTY OF INVERNESS
YEAR 2019
YEARLY RUNNING NUMBER 285
PRESENTED AND RECORDED ON

26 FEB 2019

Minute of Agreement

In terms of Section 75 of the Town and Country Planning (Scotland) Act 1997 (hereinafter referred to as the "1997 Act"),

between

CAIRNGORMS NATIONAL PARK AUTHORITY, constituted in terms of the National Parks (Scotland) Act 2000 and the Cairngorms National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2003 (hereinafter referred to as the "2003 Order") as Planning Authority in terms of Article 7(3) of the 2003 Order and Section 46 of the 1997 Act and having its main offices at 14 The Square, Grantown-on-Spey, PH26 3HG (hereinafter referred to as the "Park Authority");

and

THE RIGHT HONOURABLE IAN DEREK FRANCIS OGILVIE-GRANT, EARL OF SEAFIELD of Old Cullen, Cullen, Buckie, **THE HONOURABLE JAMES ANDREW OGILVIE-GRANT, VISCOUNT REIDHAVEN**, c/o Old Cullen aforesaid, **DAVID HENRY HOULDSWORTH**, Writer to the Signet, c/o 15 Atholl Crescent, Edinburgh EH3 8HA and **DAVID JOHN CARMICHAEL MACROBERT**, Solicitor, formerly of 152 Bath Street, Glasgow and now of Capella, 60 York Street, Glasgow, as the current trustees acting under Deed of Trust by The Honourable James Andrew Ogilvie-Grant, Viscount Reidhaven, dated 27 March 2002 (the "Trustees") (who and whose successors as owners of the Subjects or any part thereof are hereinafter referred to as the "Landowner");

Whereas:

- (A) The Park Authority is entitled in terms of *inter alia* Section 75 of the 1997 Act to enter into a planning obligation with any person in respect of land within the National Park area for the purpose of restricting or regulating the development or use of that land, either permanently or during such period as may be specified;
- (B) The Landowner is the heritable proprietor of the Subjects and is therefore able to enter into planning obligations as provided for in Section 75 of the 1997 Act;
- (C) The Landowner submitted the Planning Applications to the Council in respect of the Development;
- (D) The Council were deemed to have refused permission for the Planning Applications. The Landowner subsequently appealed those decisions to the DPEA and the Planning Permissions for the Development were granted; and
- (E) The Planning Permissions were issued subject to the Relevant Conditions, which make provision for the installation of the Half Barrier Crossing System at the Dalfaber Drive Lèvel Crossing. The Landowner is entering into this Agreement in satisfaction of those conditions.
- (F) The Park Authority, in terms of the 2003 Order, called in applications (i) Grant of Matters Specified in Conditions Ref 2018/0183/MSC and (ii) Grant of Matters Specified in Conditions Ref 2018/0184/MSC submitted to the Council for approval of certain reserved matters contained in the Planning Permissions and thereafter granted these applications. Applications to the Council are expected for approval of reserved matters contained in the Relevant Conditions and upon receiving notification of such application the Park Authority anticipates making a direction in terms of Article 7(3) of the 2003 Order that the function and power to determine such applications should be exercised by the Park Authority rather than the Council on the basis that, in the opinion of the Park Authority, the Development raises a planning issue of general significance to the National Park in terms of the said National Parks (Scotland) Act 2000;

Now therefore, the Park Authority and the Landowner as witnessed by their execution hereof Do Hereby Agree as follows:

Definitions

"Agreement" means this agreement, together with the Plan and any deed or document subsequently entered into between the Park Authority and the Landowner which is expressed to be supplemental to or a modification of this minute of agreement;

"Commence/Commencement" means to carry out a material operation (as such term is defined in Section 27(4) of the 1997 Act) in relation to the Development;

"Completion/Completed" means the date of issuing of the earlier of a Certificate of Temporary Occupation or Completion Certificate by the Highland Council's Building Standards Department in respect of any Residential Unit forming part of the Development;

"Council" means The Highland Council, a local authority constituted under the Local Government etc. (Scotland) Act 1994 and having its principal office at Council Offices, Glenurquhart Road, Inverness, IV3 5NX;

"Dalfaber Drive Level Crossing" means the level crossing at the intersection of Dalfaber Drive, Aviemore and the Aviemore to Boat of Garten private railway line;

"Date of Material Operation" means either the date intimated to the Council in accordance with the provisions of clause 4 hereof, which failing the date determined by the Council in accordance with the provisions of clause 4 hereof;

"Development" means the construction of residential units at the Subjects in accordance with the Planning Permissions and/or any Further Permissions;

"DPEA" means the Scottish Government's Division of Planning and Environmental Appeals;

"Further Permissions" means any planning permission for the same development as the Development issued pursuant to (1) an application for planning permission under Section 42 of the Act and in respect of which either the Planning Permission or a Further Permission is the previous permission; or (2) an application for planning permission under Regulation 11(1) of the DMP Regulations and in respect of which either the Planning Permission or a Further Permission was the basis for such application;

"Half Barrier Crossing System" means a half barrier level crossing system installed or to be installed at the Dalfaber Drive Level Crossing;

"Keeper's Acknowledgement" means the receipt issued by the Registers of Scotland in respect of the registration of this Agreement in the Land Register of Scotland;

"Material Operation" means the initiation of development of land in accordance with Section 27(4) of the 1997 Act;

"National Park" means the Cairngorms National Park as designated in terms of the 2003 Order;

"Parties" means the Park Authority and the Landowner;

"Plan" means the plan annexed and subscribed as relative hereto;

"Planning Applications" means the applications for planning permission for the Development, made under section 42 of the 1997 Act, submitted to the Council and allocated Council references 14/03675/S42 and 14/03676/S42, which were not called in by the Park Authority;

"Planning Permissions" means the planning permissions for the Development issued pursuant to the Planning Applications, deemed refused by the Council and subsequently granted on appeal to the DPEA under the terms and conditions of the decision notices

issued by the DPEA dated 21 March 2016 under references PPA-270-2126 and PPA-270-2127 and all associated drawings and documentation referred to therein, or which impliedly forms part thereof, and any amendment or amendments thereto;

"Relevant Conditions" means condition 20(c) of permission PPA-270-2126 and condition 21(c) of permission PPA-270-2127;

"Relevant Searches" means (i) a legal report against the Subjects with personal searches against all parties except the Park Authority, and (ii) unless the Subjects comprise the whole of a registered title, a level 3 plans report;

"Residential Unit" means any property forming part of the Development which is designed and constructed or to be constructed for residential use of any sort and which is liable to pay Council Tax, which term may apply individually or to a group of such units, whether divided from one another either vertically or horizontally;

"Schedule" means the schedule annexed and signed as relative hereto;

"Self-Evidencing Manner" means subscription in terms of Sections 3, 7 and 8 and Schedule 2 of the Requirements of Writing (Scotland) Act 1995;

"Subjects" means ALL and WHOLE that area of land at North Dalfaber, Aviemore in the County of Inverness shown coloured pink and yellow on the Plan and which forms PART and PORTION of ALL and WHOLE the subjects described in and disposed by Disposition and Assignment by The Honourable James Andrew Ogilvie-Grant, Viscount Reidhaven, in favour of the Trustees and The Honourable Alexander Derek Henry Ogilvie-Grant as Trustees therein mentioned, dated 27 and recorded in the Division of the General Register of Sasines applicable to the Counties of Inverness and Moray on 28 both days of March 2002;

"Working Days" means any day excluding Saturday or Sunday on which Scottish clearing banks are open for business.

2 Interpretation

2.1 In this agreement:

2.1.1 Words importing one gender shall be construed as importing any other gender.

2.1.2 Words importing the singular shall be construed as importing the plural and *vice-versa*.

2.1.3 Words importing personal shall include firms, companies and corporations and vice-versa.

2.1.4 Where any party comprises more than one person, the obligations and liabilities of that party under this agreement shall be joint and several obligations and liabilities of these persons.

2.1.5 References to any Act of Parliament shall include any modification, extension or re-enactment thereof for the time being in force and shall include all instruments, orders, notices, plans, regulations, bye-laws, permissions and directions for the time being made, issued or given thereunder or deriving validity therefrom.

2.1.6 References to any development plans, planning policies, and supplementary planning guidance shall include any modifications thereof and any replacement development plans, planning policies or supplementary guidance adopted or issued from time to time.

2.1.7 References to any part of the Subjects shall, where the context so requires, include references to the successors in title to that part of the Subjects.

3 Relevant Searches

- 3.1 Once the Agreement has been submitted for registration and the Keeper's Acknowledgement has been issued, the Landowner shall exhibit updated Relevant Searches (but not a plans report) to the Park Authority brought down to a date not earlier than the date following the date of the Keeper's Acknowledgement.

4 Dalfaber Drive Level Crossing Safety Measures

- 4.1 The Planning Permissions were issued subject to the Relevant Conditions. The Relevant Conditions require detailed plans and specifications for the Half Barrier Crossing System to be submitted prior to Commencement of Development for the approval of in writing by the Park Authority or that the Park Authority has certified in writing its satisfaction with commitments, legally binding all relevant parties, to a programme of works in accordance with such details prior to the Commencement of Development. As the Planning Permissions are each a 'planning permission in principle' as that term is defined in Section 59 of the 1997 Act, the said details and plans in relation to the Half Barrier Crossing System need to be submitted to the Park Authority within three years of the date of issue of the Planning Permission, i.e. before 20 March 2019.
- 4.2 No sale or occupation of a Completed Residential Unit forming part of the Development on the Subjects shall take place until (i) the Landowner has demonstrated to the Park Authority that the Half Barrier Crossing System is fully operational, and (ii) the Park Authority has given written confirmation that it is satisfied that the Half Barrier Crossing System has been constructed in accordance with the detailed plans and specifications approved in writing by the Park Authority in accordance with the detail approved under the Relevant Conditions as referred to in Clause 4.1 above.
- 4.3 The Parties hereby agree that this Agreement constitutes a legally binding commitment for the delivery of the Half Barrier Crossing System as provided for in the Relevant Conditions. This commitment will address the reason for the Relevant Conditions ('in the interests of public safety and to cope with traffic generated by the development') is met by ensuring that the Half Barrier Crossing System is in place before the traffic which would arise from occupation of the Completed Residential Units is generated.

5 Notices

- All notices which require to be given in terms of this Agreement shall be in writing and shall be deemed to be sufficiently served if signed by or on behalf of the party issuing the notice and sent by pre-paid recorded delivery or registered post addressed:
- 5.1 in the case of the Park Authority, to the Park Authority at 14 The Square, Grantown-on-Spey, Scotland, PH26 3HG or to such other address as the Park Authority may have notified the other parties previously in writing;
- 5.2 in the case of the Landowner, served on The Chief Executive, Seafeld Estate Office, Cullen, Buckie, Banffshire AB56 4UW and, for subsequent persons or entities with an interest in the Subjects (if a body corporate) at its registered office or head office, or (if an individual) at his last known address in the United Kingdom or (if a partnership) to the partnership and any one or more of the partners thereof at its last known principal place of business in the United Kingdom or (in any case) at such address as the heritable proprietor of the Subjects may have notified in writing to the other parties,

and any such notice shall be deemed to have been served on the second business day after the date on which the same was posted (excluding weekends and public and statutory holidays).

6 Legal Expenses

Within ten Working Days of signature of this Agreement the Landowner shall pay to the Park Authority (1) the Park Authority's legal expenses in connection with the negotiation, drafting,

adjustment, conclusion, execution and registration/recording of this Agreement, and (2) the registration dues payable on the registration/recording of this Agreement and any other outlays incurred in connection with the negotiation, drafting, adjustment, conclusion, execution and registration/recording of this Agreement.

7 Execution and Registration

- 7.1 The Parties will execute this Agreement in a Self Evidencing Manner.
- 7.2 The Landowner warrants that, as at the date of their execution of this Agreement, they are the heritable proprietors of the Subjects.
- 7.3 The Parties hereby agree that the Park Authority shall be the last to execute this Agreement.
- 7.4 The Parties by execution hereof consent to registration of this Agreement in the Land Register of Scotland and/or recording of this Agreement in the appropriate Division of the General Register of Sasines as appropriate and to the registration of this Agreement in the Books of Council and Session for preservation and execution.
- 7.5 In the event that the application for registration and/or recording described at clause 7.4 is rejected by the Registers of Scotland and that, as a result, the Park Authority requests the Landowners to provide documentation or information or carry out actions of any kind, including amending the terms of the Agreement (but only so far as required to enable registration), to allow the Park Authority to resubmit or submit fresh applications to complete to the issue by the Registers of Scotland of a fully registered Agreement, the Landowners will use all reasonable endeavours to promptly deliver such documentation and information to the Park Authority and carry out such action to allow the Park Authority to resubmit or submit fresh applications and to the issue by the Registers of Scotland of a fully registered or recorded Agreement.

8 Prohibition against Alienation prior to Registration

The Landowner shall not at any time before registration of this Agreement in the General Register of Sasines or Land Register of Scotland, dispose of, sublet or otherwise grant to any other party an interest in their title to the Subjects or any part thereof, or enter into any missives or agreement to part with ownership or possession of any part of the Subjects whether by way of sale, lease, licence to occupy or any other arrangement affecting the Subjects and confirm by their execution hereof that they have not, nor shall they grant any standard security over the whole or any part of the Subjects all except insofar as the same may be specifically agreed to in writing by the Park Authority which agreement shall not be unreasonably withheld or delayed.

9 Enforcement

- 9.1 Without prejudice to any other remedy which may be available to the Park Authority at law (in respect of all terms of this Agreement), the Park Authority may, in pursuance of this Agreement, avail itself where appropriate of the remedies of interdict, specific implement and reduction.
- 9.2 Notwithstanding the terms of Section 75C of the 1997 Act, which is to have no application to this Agreement, on ceasing to be the heritable proprietor of the Subjects, the Trustees shall cease to be liable for the any obligations contained in this Agreement insofar as relating to the Subjects save in respect of any antecedent breach.

10 Validity of Provisions

This Agreement is entered into under and in terms of Section 75 of the 1997 Act. Each of the terms of this Agreement has been and is agreed independently of the others and in the event of any term becoming or being held to be ineffective, whether by operation of law or otherwise, the remaining terms of this Agreement shall continue in force. However, if and to the extent that any term, provision, condition or obligation contained in this Agreement is

held in any proceedings to be a term, provision, condition or obligation which cannot be competently included in or enforced under an agreement entered into under and in terms of the said Section 75, such term, provision, condition or obligation shall, subject to the terms of this Agreement, be and remain enforceable to the same extent and effect as if this Agreement was an agreement in common form between the parties hereto.

11 Modification or discharge

In the event that the Landowner wishes to modify and/or discharge the whole or any part of this Agreement, the terms of Section 75A of the 1997 Act shall apply. The Landowner shall be responsible for the Park Authority's reasonable legal expenses and outlays properly incurred in the negotiation, drafting, preparation, completion and registration of any discharge and/or modification hereto.

12 Dispute Resolution

Except as otherwise provided in this Agreement, any difference or dispute arising as to the interpretation or meaning of this Agreement or any other matter arising therefrom shall be submitted to the final decision of an arbitrator mutually appointed or, failing agreement, to such appointment to be appointed by the Sheriff Principal of the Sheriffdom of Grampian, Highland and Islands on the application of either party, and such arbitration shall be carried out in accordance with the Arbitration (Scotland) Act 2010 and the Scottish Arbitration Rules which form Schedule 1 to that Act.

13 Jurisdiction

This Agreement shall be construed in accordance with the laws of Scotland and shall fall within the exclusive jurisdiction of the Scottish courts. IN WITNESS WHEREOF these presents typed on this and the preceding 5 pages together with the Plan are executed by the parties as follows:

Subscribed for and on behalf of the Park Authority

by

GRANT MOIN

Authorised Signatory

Full Name (Please Print)

at CAIRNSM HOTEL, AVIEMORE

on 22 Feb 2019

before

KAREN ARCHER

Witness (Signature)

Witness Name (Please Print)

DALREC, MANNFIELD,

Witness Address

CARRBRIDGE, PH23 3BB

Subscribed for and on behalf of the Landowner by

[Signature]

(Signature)

The Right Honourable Ian Derek Francis Ogilvie-Grant, Earl of Seafield

Full Name

at OLD CULLEN

on 18 January 2019

before

WILLIAM ANDERSON

Witness (Signature)

Witness Name (Please Print)

SEAFIELD ESTATE OFFICE, CULLEN

Witness Address

BUCARIE, AB56 4LW

y

[Signature]

(Signature)

The Honourable James Andrew Ogilvie-Grant, Viscount Reidhaven

Full Name

at PORSCHE CENTRE LONBRIDGE

on 30th January 2019

before

PAUL PAGE

Witness (Signature)

Witness Name (Please Print)

BROOK FARM FIVE OAK GREEN

Witness Address

LONBRIDGE KENT TN11 0QN

[Signature]

(Signature)

David Henry Houldsworth

Full Name

at DALLAS

on 5th FEBRUARY 2019

before

EWERS JOHN BRODIE

Witness (Signature)

Witness Name (Please Print)

DOWER HOUSE, LEITHEN

Witness Address

NATURAL 10/2 SPR

Registers of Scotland


(Signature)
 David John Carmichael MacRobert
 Full Name

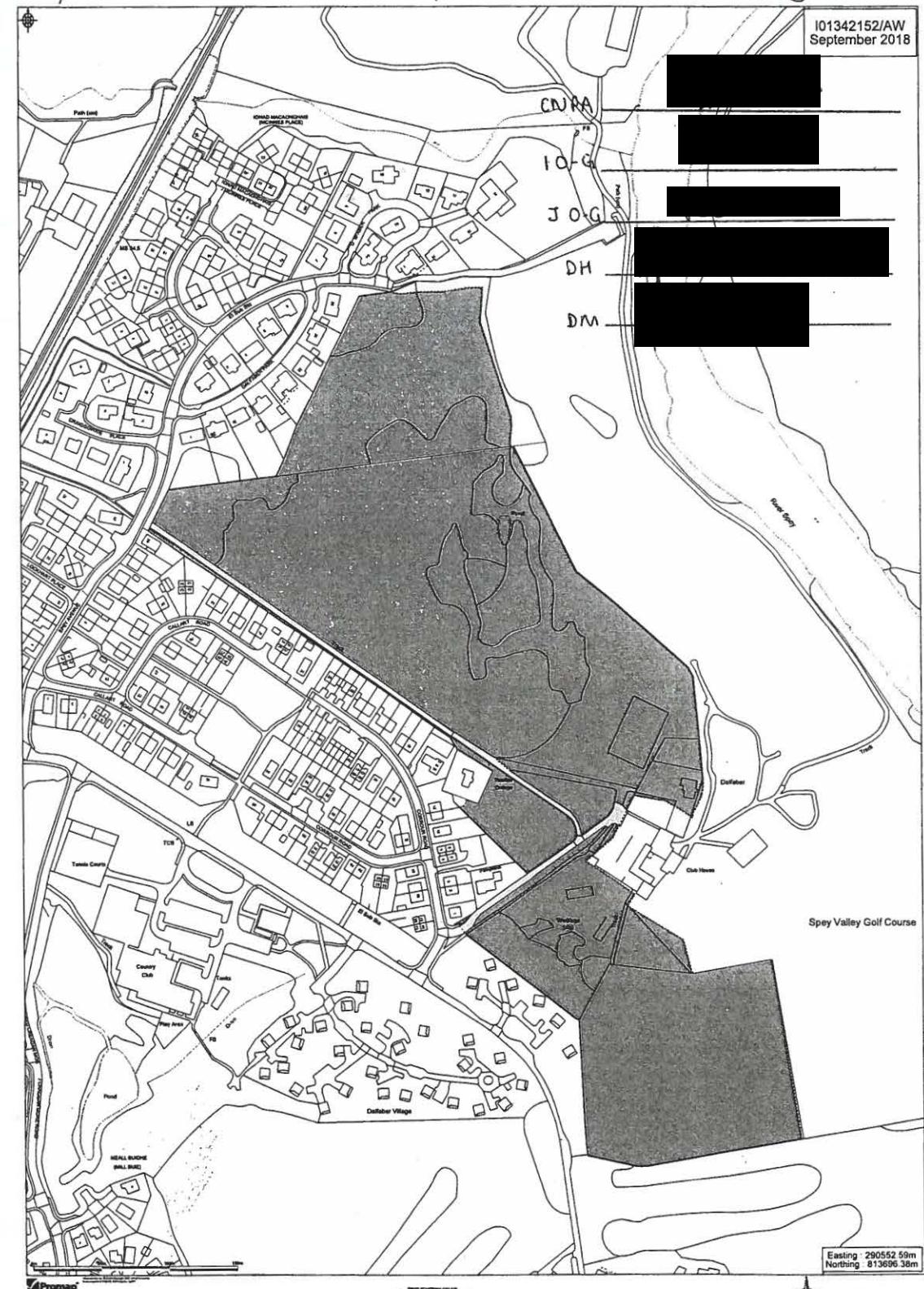
at THE TROSSACHS
on 27 JANUARY 2019
before [REDACTED]

[REDACTED] Witness (Signature)
 SUZANNE MACROBERT Witness Name (Please Print)
 Pleasanton House, Fremont Witness Address
 Pulmonia, CA 94568

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Registers of Scotland

This is the Plan referred to in the foregoing Agreement between Cairngorms National Park Authority and Trustees under Deed of Trust by ^{Golf Club North Dalar} ~~the~~ ^{Aviemore} the Honourable James Andrew Ogilvie-Grant



And the said Lords grant Warrant for lawful execution hereon.

EXTRACTED by me having commission to that effect from the
Keeper of the Registers of Scotland