

Track Changes

Tracks constructed under Permitted
Development Rights:
the need for planning control

A report for Scottish Environment LINK

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Scottish
Environment

LINK



Photographs, both pages:

Left, top & middle: Track at Glendye.

Left, bottom: Track to summit of Glas Tullaichan (1051m), Cairngorms

Right, top: Eroding track near Loch Creran

Right, middle: impassable eroded track near Water of Aven

Right, bottom: Track on Beinn a'Bhuird (since restored by NTS), Cairngorms

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This report was written for Scottish Environment LINK on behalf of:

Association for the Protection of Rural Scotland

Cairngorms Campaign

John Muir Trust

North East Mountain Trust

Ramblers Scotland

Royal Society for the Protection of Birds

Scottish Campaign for National Parks

Scottish Wild Land Group

National Trust for Scotland

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Summary

- In Scotland, land managers are permitted to construct vehicle tracks for agricultural or forestry purposes under Permitted Development Rights. This allows tracks to be constructed without applications for planning permission, the satisfaction of minimum standards, or any need to inform local authorities, statutory bodies, or the general public. Since the *Town and Country Planning Act 1947*, thousands of kilometres of tracks have been built across Scotland under Permitted Development Rights.
- The legislation granting Permitted Development Rights does not define agriculture or forestry, and as a result these rights have been effectively extended to cover tracks built for other purposes, notably for field sports. This has led to a rapid increase in the number and size of tracks constructed in recent years.
- While many tracks are legitimately required for land management, their exemption from the normal planning process has resulted in very substantial damage to landscapes and environments across Scotland. Numerous tracks have been constructed to extremely poor standards over several decades, and successive political administrations have acknowledged, and yet failed to resolve, the problem. As the mechanical power available for track construction has increased, so standards have slipped further, and the impacts of Permitted Development tracks now include:
 - Serious and wide-reaching visual impacts, leading to the loss of visual and environmental amenity;
 - Damage to sensitive vegetation and soils, especially in upland environments;
 - The destruction of, and consequent loss of stored carbon from, large areas of peatland;
 - Initiation of erosion that often spreads over very large areas and causes silt run-off into waterways;
 - Damage to or destruction of geological and geomorphological features;
 - Devaluation of recreational opportunities;
 - Potential damage to tourism.
- These impacts occur across Scotland and in almost all of our protective designations, including National Parks.
- The negative consequences of track construction are largely borne by the wider community, who have no say over the existence, location or design of tracks. Their disempowerment in the face of substantial economic and environmental impacts is unique in the planning system.
- Scotland's landscapes are of more value to the national economy than forestry and agriculture combined. However, they have been subject to steady attrition from unregulated tracks for many years. Individual tracks are now often large industrial developments in their own right; together, in their hundreds, their effects are enormous.
- Other developments of equivalent consequence are carefully considered in the formal planning process to ensure that their environmental impacts are justified by their economic, social or environmental benefits. Forestry, agriculture and field sports do not merit or require exemption from this level of consideration.
- Permitted Development Rights were intended to apply to minor developments that would receive planning permission in any case. As the examples in this report show, these conditions do not apply to modern tracks. Scottish Environment LINK believes that there is an overwhelming case for the removal of Permitted Development Rights for tracks.

Introduction

Vehicle tracks with an agricultural or forestry purpose are currently subject to Permitted Development Rights (PDRs) that exempt them from the normal planning process. These Rights date back to the postwar period, when the expansion and intensification of forestry and agriculture were felt to be of such national importance that a full planning application was seen as an unnecessary hindrance.

In the intervening years, the context in which such tracks are constructed has changed dramatically. The intensification of forestry and agriculture are no longer political priorities, the economic value of Scotland's landscapes is both substantially greater and more widely appreciated, and the environmental impacts of upland tracks are far better understood. Meanwhile, the machinery available to landowners who wish to build tracks has become more advanced, more powerful and, where used carelessly, much more damaging.

Another change that has occurred is in the effective scope of the original PDRs. Despite being specifically targeted at forestry and agricultural tracks (and other developments for these sectors, at the time), the legislation creating PDRs failed to adequately define forestry or agricultural purposes. As a result, the Rights were gradually claimed by landowners constructing tracks for the purposes of field sports, benefitting from the fact that agricultural purposes in particular are extremely difficult to disprove, and that planning authorities are unlikely to persist in lengthy and costly challenges to such claims. The original narrowly-focused PDRs were extended in this way, and some planning authorities now take the view that PDRs do in fact apply to tracks built for grouse shooting or deer stalking¹. Many others tacitly accept most tracks of this kind, realising the limitations of the poorly defined legislation.

As a result of these changes, the number of tracks built under PDRs in Scotland has rapidly increased in recent decades. This tendency is exacerbated by the large size of Scottish sporting estates, which means that tracks often cover great distances and rise to substantial elevations. Tracks are commonplace and continually being constructed in Scotland's National Parks, Sites of Special Scientific Interest and other protected areas, across iconic landscapes, and high into sensitive and unique upland environments. They have contributed to the rapid loss of land visually unaffected by development in Scotland², and destroyed numerous ancient routes, footpaths and stalkers' paths. Many are visible from great distances, and are particularly clear in satellite images of Scotland.

Despite all of the above developments, the original PDRs still stand (except for some minor amendments). Successive Governments have acknowledged that the legislation needs to be changed but, despite clear recommendations about how to do so, they have not yet acted. Most recently, a campaign involving several environmental groups and a large public petition caused the Scottish Government to consider the issue once again. However, following a public consultation it was decided that PDRs would not immediately be removed from agricultural or forestry tracks but would be kept under review³.

This report was commissioned in response to the Government's request for further evidence of the damage done by hill tracks under the current legislative framework. It has been compiled following a public appeal for information and photographs of particularly damaging new tracks across Scotland, and as such represents a record of some recently constructed tracks encountered by interested members of the public during the summer (June – August) of 2013. It is neither an exhaustive survey of hill tracks in any area, nor a quantitative assessment of their effects. Instead, it is intended to provide some recent examples of the problems with the current system and the damage resulting from them. Further detailed examples and background are provided, with a focus on north-east Scotland, in Watson(2011)⁴. The nature of Scotland's size, geography, and population distribution is such that many tracks can be constructed without being noticed for some time, and so the examples presented here are inevitably only a small proportion of the total number of recently constructed tracks.

The campaign has been carried out, and the report written, under the aegis of Scottish Environment LINK, the umbrella group for environmental organisations in Scotland. The individual organisations that have funded and co-ordinated this campaign are: the Association for the Protection of Rural Scotland, the Cairngorms Campaign, the John Muir Trust, the North East Mountain Trust, Ramblers Scotland, the Royal Society for the Protection of Birds, the Scottish Campaign for National Parks, the Scottish Wild Land Group and the National Trust for Scotland. The Mountaineering Council of Scotland also supported the campaign.



Photographs:

Top: Track on grouse moors at Glendye (Case 5)

Middle: Track through grouse moors onto Monadhliath plateau, Glenbrein (Case 4)

Bottom: Diggers excavating tracks at Glen Feshie (left) and Glendye (right)



Campaign and legislative background

Following the Second World War, there were food shortages across the UK and much of the nation's timber reserves had been depleted. As a result, there was a drive towards national self-sufficiency in case of other such conflicts⁵. Technological advances that had occurred partly as a result of the war substantially increased the potential of agricultural production and, environmental issues being less appreciated and urgent than they are now, the expansion and intensification of these key industries became a political priority.

As part of a series of post-war policies designed to stimulate economic recovery, agricultural and forestry developments were given blanket planning permission via Permitted Development Rights (PDRs) in the Town and Country Planning Act 1947⁶⁻⁸, which established the modern planning system. It is likely that these rights contributed to the growth of both industries, especially by allowing infrastructure to develop alongside technological capabilities and mechanisation. Nevertheless, there is no apparent record of detrimental impacts of agricultural or forestry tracks that stood out from those of the wider industrial activities.

However, the practical scope of PDRs developed over the years to include tracks constructed for other purposes, most notably for field sports. The failure of the legislation to provide workable definitions of forestry and agricultural purposes meant that such purposes could be claimed, in good faith or otherwise, with relative impunity. Planning authorities were hampered by a lack of practical guidance and, because action was so rarely taken, very few legal precedents were established¹. Landowners were prompted to construct networks of new tracks by the increasing tendency of their clients to favour rapid, motorised access to shooting areas, the money that could be saved when ponies were no longer used, and the ease with which they could then comply with regulations concerning the removal of deer carcasses^{9, 10}.



By the 1960s, concerns were being raised about the proliferation of 'hill tracks' in upland Scotland, particularly in and around the Cairngorms⁹. These concerns increased with the spread of tracks over subsequent years, and prompted scientific research into the effects of track construction^{9, 11-14}. Pressure from environmental groups, researchers and members of the public eventually led to reviews of the legislation. In 1980, PDRs were removed from tracks at elevations greater than 300 metres within National Scenic Areas¹⁵. This did not prevent their (illegal) construction above this elevation, however, and allowed damage to continue elsewhere⁴. PDRs were removed from all tracks in National Scenic Areas (except those approved by the Forestry Commission) in 1987¹⁶.

In 1992, PDRs for farm and forestry buildings were removed above a certain size threshold and amended to require prior notification for all others^{17, 18}. This enabled planning authorities to intervene over siting and design to minimise environmental and visual impacts. Prior notification was also required for farm and forestry tracks in this legislation¹⁷, but this requirement was almost immediately reversed¹. Research carried out for Scottish Natural Heritage (SNH) in 2002 concluded that, given longer fixed periods for local authorities and the public to respond to prior notification, and given a requirement for planning authorities to safeguard natural heritage in consultation with SNH, "*prior notification is the appropriate and light touch way to address priority concerns about the natural heritage impacts of permitted development*"¹⁹.

In 2006, a survey of all Scottish planning authorities found that many had concerns about the environmental damage caused by hill tracks and the use of PDRs by sectors to which they did not technically apply¹. That same year, further recommendations were sought by the Scottish Executive, and researchers from Heriot-Watt University were commissioned to produce a report on the General Permitted Development Order (GPDO) that establishes PDRs¹. Once again, it was found that the legislation was outdated, confused and in urgent need of revision. The report found that:



“The GPDO is an overly complex and out-of-date mechanism for deregulating appropriate categories of minor development. It is difficult to understand and interpret. As well as providing a measure of deregulation, it also imposes conditions and limitations which, as a consequence of incremental reform, are inconsistent and often perplexing to users. Although it has been amended 22 times, there is no authorized, consolidated and updated version. Taken together with its inherent complexity of language and layout, it risks unauthorised development arising from misinterpretation, and inconsistent decision-making by planning authorities, based on limited or outdated understanding, creating a climate of uncertainty for all.”¹ (pp17-18)

The report also made a number of clear recommendations for changes to sections of the GPDO relating to track formation, repair and improvement. These were not implemented.

At the same time as the Heriot-Watt report was being produced, SNH developed good practice guidance for track construction²⁰. This emphasised that alternatives to tracks should be used wherever possible and that, where required, tracks should be constructed according to practical principles intended to minimise their visual and environmental impacts. This guidance has recently been updated²¹, but despite being widely publicised and freely available online there is little evidence of its application^{4, 22} and widespread evidence of its neglect, even where its use has been explicitly recommended to landowners (Case 1, below).

Following Government’s decision not to implement the recommendations it had received over recent years and the clear failure of the continuing system of voluntary adherence to good practice guidelines, the Mountaineering Council of Scotland and other groups began a campaign in 2010 to persuade Government to remove PDRs from all tracks. There was considerable support from the public (an online petition gained over 2,500 signatures), from MSPs (Peter Peacock MSP and Sarah Boyack MSP supported the campaign), and a debate in Parliament. A review and consultation on PDRs was then carried out by the Government. However, despite receiving *“compelling evidence...of the damage caused by some tracks”* and concluding *“that the removal of Permitted Development Rights for formation of access tracks is the appropriate option”²³*, the Government eventually announced that *“following feedback at consultation stage, permitted development rights for agricultural and forestry private tracks will not be amended at this time but will be kept under review”³*.

Due to the Government’s professed willingness to consider new evidence and an invitation to Scottish Environment LINK to provide such evidence, the campaign that resulted in this report was launched. Its primary aim is to illustrate recent failures of the existing system to adequately regulate the construction of tracks in the countryside, in order to add to the large body of evidence, stretching back over several decades, that demonstrates the need to remove PDRs from agricultural and forestry tracks.

Photographs, these pages:

Opposite, top: Conachcraig from Lochnagar, with track from Glen Gelder, 1976.

Opposite, bottom: stalkers’ path destroyed by bulldozed and actively eroding track above Glen Strathfarrar.

Right: PDR track on Beinn Bhuraich, Monadhliaths, showing scale of damage caused by modern unregulated construction techniques (note person in ditch for scale).



Current situation

As a result of the original context of the GPDO and its piecemeal development in the intervening years, the legislation and practical implementation of PDRs are anachronistic and confused. Permitted development is justifiable where it *“reduces the volume of development proposals submitted for planning permission, associated burdens on developers and planning authorities, thus assisting efficient development control without causing harm to amenity”*¹. It achieves this, in principle, by excluding *“minor and uncontentious development from full planning control”*⁸. The coherence of this justification is based on two fundamental assumptions:

- that PDRs apply to minor developments;
- that PDRs apply to developments that would have received planning permission in any case.



As this report shows, neither of these assumptions hold in the modern context. The mechanisation of land management and effective extension of PDRs to tracks built for field sports mean that developments are often very large indeed, running for many kilometres, to considerable elevations, and requiring the excavation of hundreds or thousands of tonnes of earth, peat or rock. As a result, it is highly unlikely that planning permission would be granted in all cases, and inconceivable that it would not require basic standards of construction and maintenance to be adhered to. Furthermore, the intensification of forestry and agriculture is no longer a political priority, and neither is it necessary to ensure national self-sufficiency in the case of conflict. In fact, such intensification is inconsistent with many other policy aims, including those relating to biodiversity conservation and environmental justice^{1,8}.

Justifications for development are even less strong in the case of non-productive industries such as field sports, where the distribution and scale of the benefits and impacts is such that the balance between landowner and wider community interests is fundamentally



different. In such cases, it cannot be assumed that planning permission would necessarily be granted. The planning process itself is the accepted method of striking a balance in such cases.

The situation is less clear still in protected areas. Here, by definition, the dominant interest of the wider community is in preservation of aesthetic, cultural or environmental characteristics, not industrial development. The weightings given to the positive and negative effects of development would therefore be different, with a clear presumption against particularly intrusive developments in many areas, particularly where recreational interests are strong. Despite this, only National Scenic Areas are currently exempt from PDRs. No such safeguards exist in National Parks (intended to *“to protect and enhance some of the very best of our nation’s natural and cultural heritage”*²⁴), National Nature Reserves (*“areas of land set aside for nature, where the main purpose of management is the conservation of habitats and species of national and international significance”*²⁵), Sites of Special Scientific Interest (*“areas [that]...best represent our natural heritage; the essential building blocks of Scotland's protected areas for nature conservation”*²⁶), or any other local, national or international designation.



This leads to a range of damaging inconsistencies including, for example:

- the ability of landowners to bulldoze tracks freely in National Parks but not in National Scenic Areas (despite the Government's suggestion in the 3rd National Planning Framework consultation draft that both be protected from wind energy developments²⁷);
- the potential for landowners to bypass full planning procedures for developments requiring access tracks by constructing tracks under PDRs and then presenting them as 'existing' on subsequent planning applications (e.g. Cases 1 and 4, below);
- government decision-making processes on issues such as wild land mapping and protection being actively undermined by unregulated development within relevant areas (this is particularly important in light of the upcoming consultation on wild land mapping, data underpinning which are destined to be significantly out of date before any decision can be reached);
- substantial planning burdens being placed on some forms of development, even where small or felt to be of national significance, while large tracks alongside them are wholly unregulated;
- the inability of Government to achieve the protection of peatlands that it desires, given large-scale excavations outside any form of control.

Given universal adoption of good practice in track construction, some of these problems could be mitigated. Instead, as the following case studies show, the lack of regulation has led to widespread bad practice, which often causes so much damage to tracks themselves and their surroundings that it fails to adhere even to principles of common sense. While there are examples of good practice (especially from estates managed for conservation), these are far from representative. The lack of uptake of the good practice guidance that has been available for several years demonstrates the inability of the system to self-regulate.

There are, however, some circumstances that differ depending on the purpose of a track:



Agricultural tracks

Agricultural tracks are generally less intrusive and less frequently constructed than others. The agricultural need for tracks is relatively stable (and in some areas declining) as management practices have remained similar for some time. Nevertheless, there is evidence that the lack of regulation can lead to substantial and unnecessary damage (e.g. Case 9). The need for some regulation of agricultural buildings (via a requirement for prior notification) has been recognised for some time^{17, 18}, and it has previously been – briefly – accepted that tracks should come under the same conditions¹⁷. It is unlikely that planning permission would be refused for the great majority of agricultural tracks, but it would ensure the minimum standards of construction that are urgently needed.



Photographs:

Opposite top: Cumulative impact of forestry tracks and hill track apparently for field sports near Beinn Dearg, on peatlands and close to the boundary of a Special Area of Conservation

Opposite middle: Borrow pit in peat, Cairngorms National Park

Opposite bottom: An eroding, unnecessarily wide track dug through peat in the Cairngorms National Park

Above: a highly-visible agricultural track

Left: Poorly constructed agricultural track suffering from erosion

Forestry tracks

Some forestry tracks are covered by legislative and voluntary standards that apply under certain circumstances, such as when a grant or felling licence is applied for, or when forests or tracks exceed given size thresholds²⁸. When forest tracks meet these conditions, they are subject to Environmental Impact Assessment²⁹, which require the Forestry Commission to determine whether a full impact assessment is required. Further guidelines might then be followed from the UK Forestry Standard³⁰, the UK Woodland Assurance Standard³¹ and via consultation with statutory bodies such as SEPA and SNH.

Forestry tracks that are not constructed in the above circumstances are treated as ordinary permitted developments and are not subject to oversight. Furthermore, even when tracks do go through this (partly voluntary) process, it may be insufficient to maintain standards. Concerns have been raised that the system is unwieldy and difficult to enforce³², and it has certainly failed to ensure universal good practice in forestry track construction. It is also concerning that loopholes relating to size thresholds and licence or grant applications allow tracks with a supposed forestry purpose to be constructed without being subject to forestry (or any) regulations. While the potential for some oversight is welcome, it has not proved a sufficient amendment to prevent unacceptable damage from occurring under PDRs.



Field sports tracks

The sporting industry is a major beneficiary of PDRs, despite not technically being subject to them. Numerous tracks have been constructed in Scotland under PDRs for the purposes of field sports – most often grouse shooting, for which access and stalking on foot is no longer widely accepted¹⁰. The *de facto* extension of PDRs to tracks for field sports is widely acknowledged, and responses from landowners and industry lobbyists to the recent consultation on the General Permitted Development Order emphasise a wide range of uses and justifications for the retention of PDRs that are not related to agriculture or forestry³³⁻³⁶. The Heriot-Watt report of 2007 noted that:

“The GPDO nowhere refers to field sports, and the issue repeatedly arises of whether field sports count as agriculture, such that hill tracks for field sports are PD under Class 18 agricultural development. The GPDO does not define agriculture, and its definition of agricultural purposes sheds no light on the question. We understand that it is widely considered that for planning purposes field sports do not count as agriculture. Yet we have written evidence of a landowner being legally advised that a track for sporting use is PD, and of this being endorsed by the planning authority. In any case, the point is repeatedly made that a track originally intended for one use may then be employed for another, and that a distinction is not enforceable. The point has also been made that the concern of the GPDO should be with impacts, not purposes.”¹ (p.71).



This confusion over the scope and application of the legislation

demonstrates that PDRs, once established, are very difficult to delimit, and supports the widespread belief that they are no longer appropriate or relevant to track construction. Given the overwhelming evidence of tracks being constructed for field sports under PDRs, continuing application of the existing GPDO represents a clear but unofficial extension of PDRs.



Photographs:

Opposite, top left: Poorly constructed forestry track revealed by felling above Aberfeldy

Opposite, top right: Historic (1981) track on Mar Estate constructed under forestry PDRs but used for shooting access

Opposite, right: Tracks on grouse moors near Blair Atholl.

Left: Conspicuous track on grouse moors, Ayrshire

Lower middle: Borrow pit and track on Beinn Bhuraich, Monadhliath, September 2013. Despite being constructed more than 4 years ago, revegetation is limited and erosion is continuing to increase the impact of the track. Silt run-off is also continuing into the stream on right of photograph

Bottom left: Muirburn hampering re-vegetation of track verges on grouse moor at Drumochter (Case 11)

Bottom right: Old, poorly constructed track in Cairngorms National Park unusable due to continuing erosion.

Damage caused by tracks

Tracks generally cause soil compaction, and reduced soil depth and moisture. Changes in vegetation also occur, and while these may be reversed following the restoration or abandonment of tracks in grassland and heathland, they are far more persistent in upland moorland and blanket bog, where vegetation may never fully recover^{13, 37, 38}. Track verges, too, may take many years to recover, particularly where they are poorly designed, on exposed or infertile ground, or subject to further disturbance such as erosion or muirburn¹² (in contrast to repeated claims that tracks ‘blend in’ over time and that initial impacts are short-lived). Areas such as the Cairngorms, with their infertile granitic soils, are particularly badly affected³⁹. Some tracks have been observed for more than 30 years and found to erode continuously until the point that they become unusable⁴.



Photographs, this page:

Right: Turning circle at end of track to summit of Glas Tulaichean (1051m), Cairngorms NP, on highly sensitive vegetation that is unlikely ever to recover

Bottom left: Drying, leaching and slumping of peat bank of excavated track on grouse moor, Glen Dye, with further erosion and dying vegetation on top of bank. Walking poles are approximately 1.2 m in length for scale.

Bottom right: Old track dug through peat in Cairngorms NP and becoming unusable.



Of even greater concern are the effects of tracks on peatlands. These are some of the most important and sensitive environments in the world, and store vast quantities of carbon⁴⁰. Scottish peatlands are internationally significant, and the Scottish Government is making increasing efforts to protect them (the new drafts of Scottish Planning Policy and the National Planning Framework 3 both include measures to protect Scotland's peatlands^{27, 41}). However, peatlands are widely threatened by the uncontrolled construction of tracks, especially for the purposes of grouse shooting, as the cases below demonstrate.

The most damaging effects of track construction on peat relate to drainage, especially where tracks are excavated into deep peat (e.g. Cases 1, 5, 7). This results in a permanent lowering of the water table, nutrient leaching and drying of the surrounding peat⁴². If drainage is improperly planned and check dams are not used, further erosion results. This can cause the emission of all the carbon stored in the excavated peat and, subsequently, much of that stored in the surrounding area as well (in addition to the loss of the future carbon saving potential of the affected ground)⁴³.

Furthermore, resulting changes to soil chemistry and vegetation decrease the resilience and diversity of the site^{42, 44}.

Hydrology is fundamental to the health of peatlands and even small-scale disturbances can have dramatic and long-term



effects⁴⁰. These are increased every time a poorly-constructed track requires maintenance or repair work. The consequences of an excavated track running for several kilometres through peat are therefore substantially greater than they appear, and far too large to be exempt from planning consideration. They can be reversed only over long timescales, if at all^{40, 42}.

Finally, tracks can have very substantial and far-reaching visual impacts, especially where constructed on open ground or at altitude. The visual impact of developments is a major consideration in planning policy as it often represents the main or most obvious 'cost' of a development to the wider community^{27, 41}. This is particularly true in rural, natural or 'wild' landscapes, where PDR tracks occur. It has been found that such landscapes provide

greater economic and employment benefits than agriculture and forestry combined, generating tens of millions of visits and hundreds of millions of pounds for the Scottish Economy⁴⁵. The Scottish Government acknowledges that *"some of Scotland's remoter upland, mountain and coastal areas...are very sensitive to any form of intrusive human activity and have little or no capacity to accept new development"*⁴¹. In this context, some regulation of such developments is clearly necessary.



An associated point concerns access, and the consequences of track construction for recreation. While tracks increase the ease of access, particularly for mountain bikes, they are generally less pleasant to walk along than open ground or, especially, well made paths, and therefore diminish the recreation experience. In addition, the proliferation of hill tracks has meant that Ordnance Survey maps quickly fall out of date, and we have had reports of walkers becoming lost (overnight in one case) while trying to navigate in bad weather because new tracks have been constructed without any notice. In other cases track developments have been associated with new electric fences that hamper access.

All of the above impacts can be mitigated to some extent by careful construction and maintenance of tracks, and Scottish Natural Heritage guidance on upland track construction

specifically deals with this^{20, 21}. The damage caused by tracks is not, therefore, a reason for construction of tracks to be entirely halted, but it does necessitate careful consideration of each case, to balance public, private and industrial interests, and to minimise damage caused through inappropriate construction practices. The existing system of voluntary adherence to general good practice guidelines has singularly failed to address these issues.



Photographs, this page:

Top: Track crudely bulldozed through peat, Cairngorms

Middle: Continuing erosion and visual impact of poorly constructed track on Beinn Sgulaird

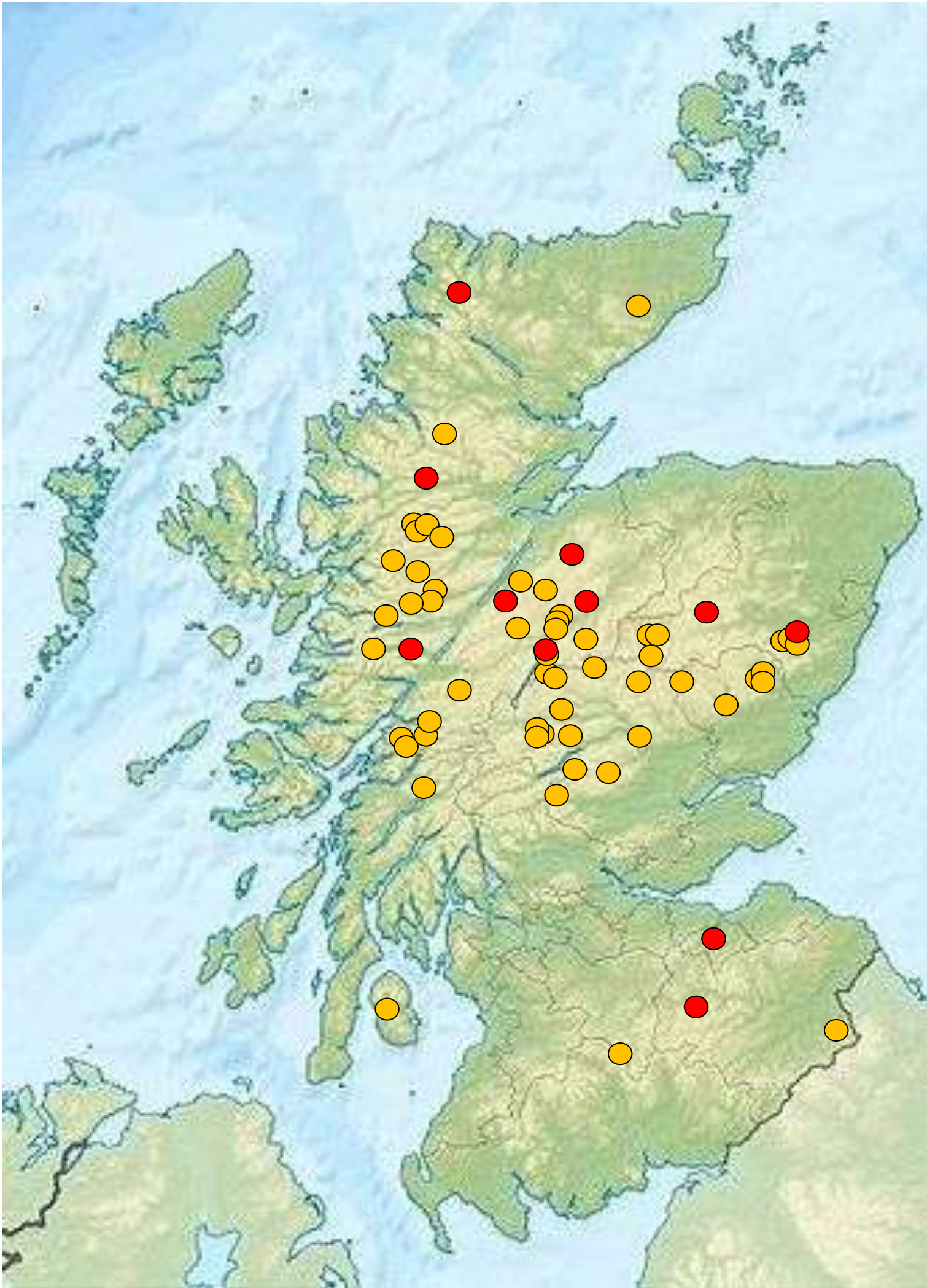
Bottom: Visual impact of a track on Arran that has not been landscaped.

Case studies

Included here is a selection of cases of tracks for which Permitted Development Rights have been assumed or granted, which have been brought to the attention of the LINK hill tracks campaign during the summer of 2013. This is not intended to be an exhaustive list of poorly constructed tracks, or even a sample from such a list, but is simply used to represent some of the problems associated with the current implementation of PDRs. All of the tracks included are, to our knowledge, perfectly legal under the current system.

A total of 67 reports of recent tracks were made to the campaign, and case studies were selected from these according to their impact, demonstration of some particular aspect of concern, and location. We therefore do not include multiple tracks that show similar problems, or multiple tracks from a small geographical area. Many other examples could have been chosen from those submitted to us, and an almost entirely separate group of tracks is detailed, for example, in Watson (2011)⁴. Nevertheless, the examples here alone illustrate a level of on-going unregulated and unnecessary damage to landscapes and environments that we do not believe is acceptable.

The photographs presented below were all submitted to the LINK hill tracks campaign by members of the public or members of the groups involved.



Approximate locations of tracks or groups of tracks reported to the LINK campaign. Locations of Case Studies are in red, all others in are in orange.



1. Ledgowan, Achnasheen, Highland

Track location

Immediately behind the Ledgowan Lodge Hotel, at the junction between the A890 road to Loch Carron and the A832 to Kinlochewe. The track starts by the hotel at NH 157 581, runs for approximately 7km to NH 103 562 where it branches, one branch continuing and branching further before ending by a loch and on a hillside, the other returning for approximately 3km to the A890 at NH 130 552. Ledgowan Estate.

Planning status

The estate claimed an agricultural purpose for the track and built it under Permitted Development Rights. Highland Council found no evidence to the contrary, so accepted the estate's claim.⁴⁶

Main impacts

The track is highly visible from a major tourist route and train line, immediately above a popular hotel, and runs through the Achnasheen Terraces Site of Special Scientific Interest, notified for its Quaternary geology and geomorphology. Several sections have been excavated deep into peat bog.

Further details

In their response to a recently submitted (pending consideration) planning application for a wind turbine on the same hillside, SNH stated:

*“there are natural heritage interests of national importance on the site but due to the location, small area required for the turbine and **the fact that no new tracks are proposed**, the main features of the site will not be affected...The site is designated for its geological interest and provides one of the best Scottish examples of an assemblage of land forms (including classic examples of terraces formed by glacial meltwater)...*

“The management objectives of the site are:

“...2. To maintain the current condition of the landforms by safeguarding against modifications to the land profile by erosion, excavations or deposition of materials”⁴⁸ (emphasis added)

The track has caused devastating and irreversible damage to features on this hillside (although SNH consider that the impact is largely outside the SSSI)⁴⁹. This damage is almost entirely as a result of the track being constructed to extremely low standards, without any apparent concern for landscape or environmental impacts, and without any external oversight or enforcement of standards. Despite SNH specifically recommending that its guidance on upland track construction be used, the estate failed to do so⁴⁹. The track surface has already been re-scraped since construction, with detritus dumped downhill of the track itself.

Further along its length, the track passes through extensive peatbogs, and extremely large borrow pits, drainage channels and other excavations are visible on recent satellite images (those available through the online 'Bing' search engine have the highest resolution). Impacts on the hydrology, ecology and carbon balance of the area will inevitably be very substantial though are, again, unmonitored.

The estate's own website appears to suggest that the track is not for agriculture, stating: *“the estate includes 18 kilometres of track so that you can explore the local wildlife and area with a local safari company”⁵⁰.*





Photographs:

Top: a distant view of the track, showing it running from behind the Ledgowan Lodge Hotel through the Achnasheen Terraces SSSI.



Opposite, bottom: A section of the track dug deep into peatbog, resulting in substantial damage to the peat including drying, leaching and erosion.

Bottom: a closer view of the track, showing its size, depth of excavation, and failure to blend into the landscape.



2. Dinnet, Aberdeenshire

Track location

On grouse moors near Morven, Dinnet Estate, Aberdeenshire. The track is at approximately NJ 390 040.

Planning status

Aberdeenshire Council Planning Department was consulted by the estate about repairs to an existing track and concluded that this was permitted development⁵¹.

Main impacts

Within Cairngorms National Park. Depending on exact location, may also be within Morven and Mullachdubh Site of Special Scientific Interest (notified for breeding bird assemblage, blanket bog, moorland juniper, alpine heath, upland assemblage, and vascular plant assemblage). The track and borrow pit involve very substantial peat excavation and no attempt has been made to blend into the landscape.

Further details

The track, along with several other existing tracks, is on a grouse moor. The track in question is a new link track (with large borrow pit) to a previously constructed track.

Photographs:

This page: the new track, borrow pits and existing tracks in the background, with muirburn visible across the area

Opposite, top: No attempt has been made to soften the angles of track to blend into the landscape.

Opposite, bottom: A closer photograph of the main borrow pit, showing a large area of excavated peat.







3. Bealach Horn, Sutherland, Highland

Track location

Track runs between Lone (NC 309 421) and Strath Dionard (NC 362 474), a distance of approximately 8.5 km. Westminster Estates, Achfary.

Planning status

The track was built without a planning application but, following a complaint, Highland Council investigated and decided that planning permission was required. Retrospective planning permission was granted in February 2010, on condition that a significant amount of restoration work was undertaken. This has now been completed to the satisfaction of the Council.⁴⁶

Main impacts

The track was built to a very poor standard, in a wild and remote area prized for its landscapes. Its aesthetic impact was, and remains, substantial. It is located in the North West Sutherland National Scenic Area and the Foinaven Site of Special Scientific Interest, Special Protection Area and Special Area of Conservation.

Further details

These images are from 2009, when the track was recently constructed. It is shown on the current OS map as a footpath (probably a stalkers' path).

Despite the remedial work undertaken at the Council's insistence, considerable impacts persist, which could have been avoided had planning permission been sought in the first instance. In particular, construction of the track involved the excavation of a great deal of peat, releasing carbon and causing leaching and erosion. Later remediation is incapable of fully reversing these impacts.



Photographs:

Top:

A section of track crudely excavated out of peat and already eroding.

Bottom: Track running through peat bog.



4. Glen Brein, Monadhliath, Highland

Track location

Begins near Glenbrein Lodge, Dell Estate (NH 476 121) and runs above the eastern side of the Allt Breineag, through land managed for grouse, for approximately 2km before turning upwards and ascending to the Monadhliath plateau at a height of around 700m. The track runs for at least 3km in total, but the distance it extends onto the Monadhliath plateau is not known.

Planning status

First section constructed some time ago; second section is recent and runs onto Monadhliath plateau. No planning application was made⁴⁶, but the track ends at or near an anemometer (for a possible wind farm) that was given planning permission without any access track being suggested or approved⁵². The track also provides (existing) access to a proposed hydro scheme, but the new section is not shown on this application either⁵³. Construction outside the full planning process therefore seems to be for the benefit of other proposals and, if so, obscures their true impacts.

Main impacts

The track is cut through peat, especially in its higher reaches where it is excavated into the deep peat of the Monadhliath plateau. This will have caused, and will continue to cause, substantial carbon emissions, leaching, subsidence and further erosion.

Drainage has been improperly planned along the track, with ditches that are far too deep, wide and steep-sided, and with uncovered and unstable boulders within them. Slumping and erosion is already visible and is widening the impact of the track, causing further leaching and drying of peat.





Photographs:
Opposite, top: The track, excavated material and eroding verges are visible for several miles

Both pages: The track is far wider than necessary, ditches are too deep and steep-sided, and excavated material (including peat) has been dumped over a large area downhill of the track. Substantial quantities of peat have dried out as a result, releasing stored carbon and leaching nutrients. Revegetation in these conditions and at this altitude will be very slow. Silt run-off is also likely to be an issue.



This page, top:
Deep, steep-sided ditches have exposed unsupported boulders that are now eroding out, widening the impact of the track.



This page, middle:
The lower reaches of the track, despite being much older and narrower, have not blended into the landscape with age, and erosion has continued on the high and unstable verges.



5. Glendye, Aberdeenshire

Track location

A connected network of tracks constructed on Fasque and Glendye Estate. Of particular concerns are two of these – one running along the south side of the Water of Aven (Track 1) and another running from Charr to the Hill of Edendoncher (Track 2). Track 1 follows the Water of Aven for roughly 7.5 km, from an earlier track at NO 625 890 to NO 583 878 and beyond, and Track 2 runs between Charr and the Hill of Edendoncher.

Planning status

Track 1 (Water of Aven):

Construction began in December 2007, without planning permission. When most of the track was completed, Aberdeenshire Council issued a 'stop notice' while it determined whether planning permission was required. The estate claimed that the track had an agricultural purpose, despite it apparently being for grouse shooting, but this created enough uncertainty that the Council decided not to proceed with enforcement action. The estate subsequently carried out remedial work to the satisfaction of SEPA. However, in April 2010, the estate extended the track by 0.5 km.^{4, 54}

Track 2 (Charr – Hill of Edendoncher):

Aberdeenshire Council Planning Department was consulted by the estate about repairs to an existing track and concluded that this was permitted development⁵¹.

Main impacts

Track 1:

Both the initial work and the later extension caused substantial silt run-off into Water of Aven, and so into the River Dee and the River Dee Special Area of Conservation. Construction work also proceeded close to an occupied Golden Eagle nest, following which the female deserted the nest^{4,54}.

Track 2:

This track has been excavated deep into peat, is far too wide for its purpose, and is very poorly constructed. The track sides are too high and too steep and are already subsiding, while there is no drainage along much of the track, which is already causing erosion. Together with other tracks in the area, these have substantial cumulative impact.

Further details

Along with several others in the vicinity, these tracks run across grouse moors and lead to grouse shooting butts. SNH and SEPA should both have been consulted, given the impacts of the tracks, but they were not (although the estate eventually complied with SEPA's requirement for remedial work, it subsequently extended the track, causing more silt run-off pollution)⁴. Planning permission in these cases may not only have prevented the loss of a Golden Eagle breeding attempt, but would have saved a considerable amount of wasted effort on behalf of the planning authority and others, and certainly would have resulted in far less serious environmental damage. The estate has shown consistent disregard for the planning system and environmental or aesthetic issues.





Photographs, both pages:

Opposite, left: Track 1, bulldozed crudely above the Water of Aven, causing very substantial erosion and silt run-off

Opposite, right: Track 2, like others in the area, runs across grouse moors and directly to grouse shooting butts. It has no apparent agricultural purpose.

This page: Track 2 has been excavated deep into peat and is unnecessarily wide. Together with the extremely poor construction standards, this has led to a great deal of additional and unnecessary damage, including slumping and erosion of peat, erosion damage to the track itself, and collapse and spread of banks. The walking poles in the middle-left photograph are approximately 1.2 m in length.





6. Glensulaig, Kinlocheil, Highland

Track location

Near Fassfern, Kinlocheil. The track replaces a footpath shown on the OS map running from the bridge before Glensulaig bothy (NN 027 830), up Allt Fionn Doire and over into Gleann Fionnlighe, where it ends after more than 3 km at NN 018 855. The track begins near a forestry plantation and runs up to high ground used for deer stalking. Locheil Estate.

Planning status

The track was complete in May 2010, when these photographs were taken. Highland Council has no record of a planning application and believes the track is covered by PDRs⁴⁶.

Main impacts

Poorly constructed and goes through areas of peatland, with poor drainage and design causing erosion, leaching and drying. Potential damage to local wildlife (see below)

Further details

A proposal for a hydro scheme on the river An t-Suilleag near Glensulaig bothy is currently under consideration with Highland Council. The proposal's maps do not show the track (they show the same footpath as the OS map). In response to this proposal, Scottish Natural Heritage commented that there were signs of otters and pine martens in the area, and that the habitat was suitable for wildcat and bats – all protected species that would require Species Protection Plans⁵⁵. A high level of Otter activity was found in An t-Suilleag. Further surveys and Species Protection Plans were requested by SNH before the application should be approved. No such surveys or Plans were made for the track, because it did not require planning permission. The Scottish Environment Protection Agency also expressed concern about damage to peat, and the proposal was altered to minimise this⁵⁶. Again, the track has a very large impact on the same peatland, but was subject to no controls.

**Photographs,
opposite:**

**Top: Erosion, leading
to silt run-off, in and
around a stream**

**Bottom: The track has
been constructed with
little attention to its
landscape impacts,
and ineffective
drainage. The drainage
ditch is eroding and
the verge is spreading
uphill.**





7. Kyllachy, Highland

Track location

Glen Kyllachy, near Tomatin. Begins at NH 725 262 and loops over Carn Oighreagan, Aonach Odhar (642m) and then back north round Carn Uillit Tharsuinn. Approximately 10km in length. Unknown estate.

Planning status

Highland Council has no record of a planning application⁴⁶.

Main impacts

Substantial and widespread visual impact. Excavation of peat; carbon emissions and leaching, further erosion. Track is too wide, drainage ditches too big or sometimes absent, boulders not buried and little or no landscaping work taken place. In many places the effects of the track are actively spreading as erosion occurs.

Further details

On older OS 1:50,000 map sheet 35 only part of the track is shown, but the date of construction of the newer section is not known.



Photographs:

Opposite page: The track is part of a network that runs for many miles on grouse moors, across peatland



This page, top: a section of the track at elevation, showing impact on sensitive surrounding vegetation. The track is unnecessarily wide and boulders have been dug out of the ground and left uncovered. Banks are steep, susceptible to erosions and unlikely to re-vegetate

This page, bottom: The track has been dug through peat for a considerable distance, where poor design is leading to erosion and drying of peat.





8. Lynwilg, Aviemore, Highland

Track location

Runs from Lynwilg, near Aviemore, over the bealach between the Corbett Geal-charn Mor and Geal-charn Beag, and down to the River Dulnain where it joins other tracks. The track begins at NH 874 110 and ends approximately 8km later at NH 812 164. Kinrara Estate.

Planning status

Highland Council has no record of a planning application or consultation⁴⁶.

Main impacts

High visual impact and poor design, with large cut-aways and further erosion.

The track is partly within the Cairngorms National Park, and begins on the edge of Craigellachie Site of Special Scientific Interest and Craigellachie National Nature Reserve.

Further details

The track replaces an existing, less intrusive track, which was substantially upgraded and widened. The track runs across grouse moors and was being used for muirburning when the photographs were taken.





Photographs:

Opposite page: The track runs high into very sensitive environments, where it remains unnecessarily wide and with large verges that will re-vegetate only slowly.

This page, top: Large, steep and eroding banks some distance from the track itself.



This page, middle: Muirburning around the track. Muirburn below the track is hampering re-vegetation and may be worsening erosion and silt runoff.



This page, bottom: The track being used to access grouse moors for muirburning. The track is almost twice as wide as the vehicle using it.



9. North Esk, Pentlands, Midlothian

Track location

Runs between the dam on North Esk Reservoir (NT 155 579) and Spittal Farm, linking tracks at the dam and farm. Ownership unknown.

Planning status

Midlothian Council was not aware of the track until our enquiry and is currently investigating.⁵⁷ (SNH was also unaware, despite the track starting in an SSSI⁴⁹). However, the track is on a working farm and is likely to be legitimately covered by PDRs.

Main impacts

Track begins in the North Esk Valley SSSI, and lies within the Pentland Hills Regional Park. It has destroyed a section of one of the 'Pentland Paths' footpaths that runs through the Park. The track has been very badly constructed and is certain to erode further (there are signs that landslip is already occurring above it) and has a considerable negative impact on the visual amenity of the area. The SSSI is notified partly for stratigraphy and palaeontology, both features subject to damage by track construction of this kind.

Further details

The track was constructed during the summer of 2013, and was complete in August, when it was reported to the campaign.





Photographs:

Opposite page: The track has simply been dug out of the hillside with no regard for design or impact. It has obliterated a section of footpath (note sign on left of photograph) and vegetation has been buried below and above it.

This page, top: The track is highly conspicuous and has a large impact on visual amenity in an area popular for recreation.

This page, bottom: The entire lower section of the track. It begins near the dam in the SSSI, where landslips are visible above it. The line of the footpath can be seen above the track bank, where it is inaccessible.





10. Pykestone Hill, Borders

Track location

Runs from Drumelzier to Pykestone Hill. The track runs up the shoulder of and over Den Knowes Head, through grouse moors, from NT 146 327. One roughly 0.5 km long section on Den Knowes is excavated and eroding. Drumelzier Place Estate.

Planning status

Scottish Borders Council has no record of a planning application or correspondence about this track.⁵⁸

Main impacts

No attempt has been made to blend the track into landscape. Crudely excavated without sufficient drainage, the track is already eroding and widening. It is in the Upper Tweeddale National Scenic Area and Tweedsmuir Hills Site of Special Scientific Interest (notified for assemblages of breeding birds, bryophytes, upland and vascular plants).

Further details

The track was formerly a footpath and possibly a very old cattle route before that. Before the excavation of the track, it was a relatively unobtrusive grassy track. The photos shown here were taken in the summer of 2013 and show that the area is managed for grouse shooting.





Photographs:

Opposite page: No attempt has been made to landscape the track, and these zig-zags are visible from considerable distances.

This page, top & middle: Due to poor design, erosion is already damaging the track and slopes below. The verges have not re-vegetated successfully.

This page, bottom: More erosion at the junction of the newly excavated track with the older, far less intrusive and damaging track.



11. Drumochter, Highland

Track location

Three tracks that begin at Balsporran cottages and branch at NN 623 791. Two (newer) tracks go uphill on either side of the Allt Beul an Sporain, while an older, larger track runs up the Allt Coire Fhar below Geal Charn. Drumochter and Ralia Estate.

Planning status

Highland Council has no record of a planning application⁴⁶.

Main impacts

The tracks are within the Cairngorms National Park, in an area already impacted by the A9, railway line, existing pylons, Beauty-Denny works and tracks, and many other hill tracks. The cumulative impact is very substantial, and local visual and environmental impacts are also significant due to poor construction, particularly of the older track.

Further details

The tracks run across grouse moors. A similar but better designed track to grouse butts has recently been constructed nearby, within the Drumochter Hills Site of Special Scientific Interest, Special Area of Conservation and Special Protection Area. This track was subject to planning permission and so the Cairngorms National Park Authority and Scottish Natural Heritage, amongst others, were able to work with the estate to ensure appropriate standards were met.





Photographs, opposite page:

Left: Numerous tracks run across grouse moors in this area.

Right, top & bottom: Banks and verges have not re-vegetated and are continuing to erode.

This page, top and above: Many large borrow pits and banks (the rucksack is approximately 1m in length, for scale) are located along the tracks and have not been landscaped. They are eroding, rather than vegetating, and are highly conspicuous across the entire area.

This page, left: Eroding banks and sharp, highly visible bends.

Conclusions

The above cases demonstrate the inability of current planning law to deal with modern track developments. Permitted Development Rights established nearly 70 years ago are not an appropriate mechanism for dealing with developments of the scale and consequence shown here. They have failed to keep pace with technological, political, economic or environmental change, and have even been unofficially extended to cover an industry that was never meant to benefit from them.

The purpose of PDRs is to ease the burden on the planning system and applicants by removing the need for minor developments, which would eventually receive planning permission, to go through the full planning process. They can only be justified in cases where developments are uncontentious, cause little damage to their environments, or where the reasons for development to proceed are commensurately great. In their original setting, PDRs for agricultural and forestry tracks met all of these conditions in most cases. Today, none of these apply in most cases.

The case studies above contribute to a large and long-standing body of evidence that shows:

- the *de facto* extension of PDRs to the field sports industry;
- a steady increase in environmental and aesthetic damage caused by tracks built under PDRs as mechanical power increases and costs of construction decrease;
- the widespread use of poor construction practices that dramatically increase environmental impact, despite the ready availability of good practice guidance;
- the scarring of many of Scotland's most iconic landscapes, including those within National Parks and other designations;
- the undermining of Government policy relating to protection of peatlands, wild land, and sensitive environments and to environmental justice;
- the potential for the planning system to be subverted by the use of PDRs to construct tracks that are then used for subsequent, non-PDR developments or to damage an area where development would otherwise have been ruled out;
- a consequent and rapid increase in the detrimental impacts borne by the wider community and other interests.

On several occasions, political administrations have been presented with similar evidence, acknowledged that a clear problem exists, and yet failed to act. Hundreds of kilometres of tracks for forestry, agriculture and field sports have been built to very low standards under PDRs, and yet PDRs have not been amended. The consequences of this are visible in the above photographs; developers infer that the damage they cause is regarded as insignificant, and so see no reason to invest time and money in improving standards.

Clearly, however, the damage presented here is significant, and not only for its direct effects. Local communities and national communities of interest are denied any say over the construction of tracks in Scotland, yet bear many of the impacts. Natural amenity, often of great importance to rural communities and highly valued nationally⁵⁹ is lost. The livelihoods of many Scottish people depend upon tourism, with 200,000 employed in the sector, often in rural and remote communities. Nature-based tourism is worth an estimated £1.4 billion annually to the national economy, and Scotland's landscapes and scenery alone are worth £420 million per year, in terms of tourism (more than three times the value of field sports)⁶⁰. Indeed, Scotland's natural beauty is fundamental to the entire tourist industry, and 90% of visitors to Scotland cite scenery as a major factor in their choice of destination⁶¹. As a result, the Scottish Government has argued that "*the development of hill roads [needs] to be carefully managed, minimised and, if possible, avoided*"^{61, p.2}.

Despite this, the unregulated and largely unnecessary attrition of Scotland's landscapes by tracks has been tolerated for many years. Cumulatively, these can and do threaten landscapes and environments that are of genuine national or international significance. The lack of oversight with which this occurs, and the disempowerment of those with legitimate interests in this process, cannot be justified.

The evidence also clearly shows that good practice cannot be maintained in the absence of monitoring and enforcement. It is not the role of environmental charities and members of the public to provide these services, but rather a responsibility of the planning system. Detailed good-practice guidance has been freely available for several years but, even where directly informed of it, many developers simply ignore it (e.g. Case 1). Once built, tracks are not restored when they are no longer needed, although this is often a requirement of planning approval for non-PDR tracks. Furthermore, retrospective monitoring and enforcement is far from adequate. Restoration must be ordered within a certain time, is not

always carried out even when ordered, and is not as effective as the use of good practice in the first place⁴ (see Appendix 2). It is also considerably more burdensome and expensive for developers. If the environmental damage highlighted in this report is regarded as unacceptable, as it surely must be, a thorough reform or retraction of PDRs is the only solution. It is beyond the scope of this report to identify particular changes that should be made to the planning legislation. However, several broad options are apparent, some of which are more appropriate than others:

1. Remove Permitted Development Rights from all tracks

This is the most complete and justifiable solution to the problems discussed above. It is also the option previously favoured by the Scottish Government and currently by members of Scottish Environment LINK, and the appropriate response to the changing context of the General Permitted Development Order. Removal of PDRs would ensure that tracks could be judged on their own merits and, most importantly, that minimum standards of construction and maintenance could be enforced. In the case of tracks for field sports, it would allow more open and honest considerations than are possible under the current, confused system.

Tracks for forestry, agriculture and field sports have all been widely built to poor standards and caused substantial damage as a result. Furthermore, they do not meet the basic conditions for permitted developments of being minor and of such general importance that they would receive planning permission in any case. As the Heriot-Watt report of 2007 notes in relation to agriculture, it is reasonable to argue that:

“Agricultural development was originally granted privileged PDR to maximize output, and on the generally held understanding that agriculture was the guardian of the countryside. Neither premise now holds. Farms may need to change for agriculture to thrive economically, but the same applies to other businesses which now underpin the rural economy. The needs do not mitigate the impacts, which should be regulated, and the requirement to apply for planning permission is a burden proportionate to the risk of deregulation.”^{1(p.59)}.

Similar arguments apply to forestry, which is in any case diversifying away from its original narrowly productive purpose. A justification for PDRs for field sports has never been given. One argument that remains credible, at least in some cases, is the occasional need to construct tracks quickly and with flexibility. However, where this really is essential, there is no reason why speed and flexibility could not be built into the planning process, as a consequence of particular needs in particular circumstances.

It is important to recognise that removal of PDRs would not preclude future track development, especially if the justifications are as strong as proponents of PDRs suggest. Some tracks may indeed be essential tools of land management^{34, 36}, but there is nothing essential about the damage that many of them cause. The planning process is the appropriate mechanism for weighing the different interests in such cases, and ensuring that any impacts are acceptable to the wider community. For this reason, this option is strongly favoured by members of Scottish Environment LINK.

2. Remove Permitted Development Rights from all tracks except those for forestry

The forestry industry was the principal objector to previous Government plans to remove PDRs³³. As it points out, some forest tracks are already subject to a limited system of oversight that other PDR tracks are not (see above). This system does have loopholes (to do with track size, licence and grant applications) that mean that some ‘forestry’ tracks are not subject to forestry regulations. However, we understand that the Forestry Commission would not object to the removal of PDRs in these and all other cases, so that track proposals would either go through the existing forestry system or through a full planning application.

Nevertheless, serious concerns exist about the robustness of the forestry track system and its ability to ensure minimum standards are met³². Not all tracks are subject to the same degree of scrutiny, and enforcement is difficult, depends upon arbitrary monitoring and places a considerable burden on the Forestry Commission. It is certainly true

that this system has so far failed to guarantee adequate standards, and does not appear to represent a significantly smaller burden than the usual planning process. As a result, it is seen as significantly inferior to the planning process.

3. Explicitly exclude tracks for field sports from PDRs

The exclusion of field sports from PDRs would, in principle, return the legislation to its original scope, which covered only forestry and agricultural tracks. It is an option likely to be accepted by the majority of forestry and agricultural interests, and was an interim recommendation of the 2007 Heriot-Watt report:

“the best course of action is meantime to maintain the status quo, excepting to amend the GPDO to clarify that tracks for purposes other than agriculture or forestry are not PD, and that field sports do not qualify as agriculture.”¹ (p.73)

However, while such an amendment could utilise existing legal definitions of agriculture such as that in the *Town and Country Planning (Scotland) Act 1997* (and a tightened framework to ensure that all forestry tracks went through the existing forestry system), it is not clear how it could succeed in practice. The near impossibility of disproving agricultural uses would remain a substantial issue, especially where tracks serve several different purposes, and would place a considerable additional burden on planning authorities. Furthermore, this option fails to address the fundamental issue of the impacts of tracks, regardless of their purpose. Tracks for forestry and agriculture cause a great deal of damage, as illustrated in the above case studies and elsewhere, and the differences between the context of PDRs in 1947 and in 2013 mean that neither industry now warrants special treatment in the planning system. As a result, this option would appear to be an inconsistent and inadequate response to the issues raised here, if not entirely unworkable

4. Introduce prior notification

A requirement for prior notification, rather than full planning permission, is the weakest response to the problems of PDRs. It is likely to be accepted by forestry, agriculture and field sports interests, but only because it would not substantively change the existing situation. As the Loch Lomond and the Trossachs National Park Authority wrote in its response to the 2012 GPDO consultation:

“we do not think a prior notification procedure for PDR for agricultural and/or forestry tracks would be fit for purpose. We have encountered significant problems with this procedure in respect of agricultural buildings and we do not consider it to be resource efficient or effective”³²

Crucially, prior notification would not allow full public oversight of planning applications or require the same level of justification for development as planning permission. It would preclude the full range of interested parties from being heard and, as suggested above, may not even achieve its own limited aims. Once again, it does not address the inconsistency implicit in allowing agricultural, forestry and field sports tracks to bypass planning regulations with which developments for other industries must comply. It is unlikely to make any significant difference to the majority of issues identified in this report.

While each of these options has different advantages and drawbacks, the first and, to a lesser extent, the second are both strongly preferable to the *status quo*. The third and fourth options do not address many of the problems associated with current Permitted Development Rights, and are likely to be of little or no benefit. In any case, the continued existence of unaltered PDRs for tracks as numerous and damaging as those detailed here and elsewhere cannot be reasonably justified. Previous experiments in delaying intervention and establishing voluntary standards have led to very substantial damage of the kind that is illustrated in this report (even following the recent consultation on the removal of PDRs, which must have alerted land managers to the need for responsible methods of track construction). Industrial developments of the scale and impact shown here are not exempt from the normal planning process in any other case, and should clearly no longer be exempt for forestry, agriculture or field sports.

Photograph:

**Track high into
peatland in
Gleann Fada,
between Cluanie
and Glen Affric**



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Appendix 1: Additional Photographs

This appendix contains samples of photographs submitted to the campaign but not included in the main report. Where multiple photographs of the same track were submitted, only one or two have been included here. All photographs were taken at the locations shown on p.17. Exact locations and details are not available for all tracks.



Above: 'Thrown down' track, Deeside



Above: Eroding bank, Cairngorms National Park



Above: Track in Cairngorms National Park

Below: Eroding verges near Loch Creran



Above: deep ditch and overly steep banks on track in Cairngorms

Below: Pine wood eroding out of peat at excavated track, Kyllachy





Above: Track eroding off underlying polythene at Kyllachy

Below: Damaged verges on track near Ballater



Above: Track running through peat bogs at Kyllachy

Below: Track built up full height of Glas Tulaichean (1051m)



Above: Bulldozed track without drainage, Invercauld Estate

Below: Track on Drummond Estates



Above: Crudely engineered track near Ballater

Below: Tracks below Cairn Mairg





Above: Highly visible track, near Monar Lodge

Below: Track through sheiling ruins, Glenlyon



Above: 'thrown down' track on Grouse moors, Ben Gulabin

Below: Riverside track and erosion, Glenlyon



Above: Track near Kyllachy

Below: Eroding forestry track, Glen Ample



Above: Large turning area on track near Daviot

Below: Track to hill summit, Monadhliaths





Above: Track on a Graham near Tomatin

Below: Track in Glen Fionndrigh



Above: Possibly abandoned track near Braemore

Below: Track near Cluanie



Above: Track across grouse moors (left) and eroding track in Borders (right)



Left: Track near Lairig-Leacach bothy

Right: Eroding track in the Cheviots





Above, left and right: Some of many tracks in Glen Moy, Angus

Below:, left and right: track upgrading at Glen Feshie



Above: New, wider track at Glen Feshie

Above: Poorly constructed track by Loch Monar

Below, left and right: large turning circle and peat erosion, Angus glens



Appendix 2: track restoration

Restoration of tracks is very rarely carried out. Where existing tracks are retrospectively found to require a full planning application or to be in breach of environmental regulations, remedial work rather than restoration is usually required (e.g. Cases 3 and 5). Nevertheless, it is possible to restore tracks and this is likely to be the appropriate course of action in some cases.

There is increasing expertise on track restoration in landowning environmental organisations and National Park Authorities. The National Trust for Scotland has undertaken major restoration works at their Mar Lodge Estate and, following experiments with different restoration strategies, is now able to restore tracks at approximately the same cost as initial construction (Email correspondence with NTS). The Cairngorms National Park Authority has also overseen considerable reconstruction work, in collaboration with landowners (email correspondence with CNPA).

However, while restoration is possible, it is not a simple process. Detailed knowledge of environmental characteristics and restoration methods is required. Even given the necessary expertise, the recovery of soils and vegetation are slow processes, and are not guaranteed to succeed in all circumstances. Geological and geomorphological features cannot normally be restored at all. Removal of tracks is therefore a reasonable and appropriate option for those constructed outside the planning system and found to be unjustified, but is not a substitute for proper planning control in the first instance. As with remedial work, the original state of the affected area is unlikely to be recovered.



Photographs, above: Track in Cairngorms National Park before and after restoration.

Below: Restoration of a track by the National Trust for Scotland, Glen Derry.

Overleaf: Well designed and maintained track on Invercauld estate (left) and a restored track in Glen Dee (right)





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