



# THE MOUNTAINEERING COUNCIL OF SCOTLAND

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Highland Council Planning Department  
Dingwall

Dear Ms Ferguson

## **Re Retrospective Planning Permission for a track on Beinn Enaglair 05/00524/FULRC**

The MCoS believes that retrospective applications should be treated on its merits against the policies in the development plan (Local Plan and Structure Plan) and effectively assessed in the same way as if it were not already there. The question of reinstatement or amelioration work should be treated separately such as not to set a precedent that retrospective planning permissions will be granted on the basis that some tidying up occurs of a development that would never have been permitted if applied for in line with the procedure of doing so in advance or construction.

### **Development description**

The entry against Question 4 requiring a description of proposed development and is stated as "**Widening and realignment and repairs to existing track (required to make it safe): reinstatement of deviations from line of existing track (retrospective).**" Whether these post-application changes are normal, I am unsure, although the blue entries improve the description of the development to some extent. What primarily concerns the MCoS regarding the scant information on the application form is there is no evidence that this "existing track" was indeed existing as a track at the time of the construction (prior to planning permission application), hence whether the information on the application form is true reflection of the works for which the planning permission is sought. The 1:25000 OS map copyrighted in 2009 marks it as a footpath. The data used for this edition are likely to have been collected soon before 2004 when SNH became aware of the tracks construction took place, the exact date is likely to be available from OS. The similarly marked footpath on the north side of the hill at about NH 233 806 is a well-established stalkers path. It is of variable width, but is distinct from a track, which would be capable of accommodating a vehicle larger than a small ATV. A stalkers path, whether or not with the potential to accommodate a small ATV, is fundamentally different from a track both in terms of land take, impact on natural heritage features and landscape impact.

### **Qualifying Features / Notified Features**

The site is both an SSSI and SAC with a wide range of qualifying features of which at least the wet heath component will be (has been) negatively impacted by this development and will mean the aim of maintenance of "extent of the habitat on site" (a management objective) cannot be achieved. Without access to NVC maps, MCoS cannot conclude that this is the only impact on the European qualifying features, but can accept SNHs statement as reflecting the SAC qualifying feature as the main one that will be (has been) impacted by the development.

### **Development Plan**

The Town & Country Planning (Scotland) Act 1997 Section 25 requires the determination to be made in accordance with the provisions of the development plan unless material considerations indicate otherwise. The Structure Plan states at 2.13.3 that “developments affecting international and national sites are possible if they are compatible with maintaining the features for which the sites are designated.” This is not the case as, at minimum, the development is not (was not) compatible with maintaining the wet heath habitat extent. Structure Plan Policy N1 states that “developments which would have an adverse effect on the conservation interests for which a site has been designated will only be permitted where there is no alternative solution and there are imperative reasons of over-riding public interest.” The evidence provided in the application (answer to Question 6 about purpose of the development was "access track to hill") does not establish that there is no alternative nor that there are imperative reasons of over-riding public interest for the development.

Highland Structure Plan Policy G2 is also relevant and states that “proposed developments will be assessed on the extent to which they: impact on the following resources ... particularly within designated areas:” and the list includes habitats, species, landscape and scenery. It also states that developments “demonstrate sensitive siting and high quality design.” In no way could it be argued that the track is of high quality design or takes into consideration any of the listed items.

Additionally, the site is in an Area of Great Landscape Value, and as such the landscape impacts must be taken into account and Strategic Policy G6 applies to proposals within or affecting them. G6 states that “the Council will seek to conserve and promote all sites and areas of Highland identified as being of a high quality in terms of nature conservation, landscape, archaeological or built environment.” In order to achieve this, the landscape must be taken into consideration in this case.

### **In the event that planning permission is granted**

Refusing retrospective planning permission, and requiring reinstatement, should be fully considered. It is recognised that this would further disturb the ground, but so would amelioration works. Whether the disturbance would be significantly less needs calculated alongside the long term outcome of the continued existence of a track that should not have been permitted if the application had been made at the correct time (prior to construction). Should reinstatement not be demanded, there should be strict planning conditions of extensive amelioration works accompanied by a map such that the agreement can be objectively monitored. These should be assessed by an independent expert in track construction and at minimum adhere to the SNH publication, Constructed Tracks in the Scottish Uplands. It should be noted that substantial drainage ditches would increase the negative impact on the landscape and mean more land take from the qualifying features. If these are not absolutely necessary then amelioration work including this would contravene the structure plan requirements for high quality design taking into account the impacts on the landscape and natural heritage features of the site.

The MCoFS supports a decision that accepts that the continued existence of the track as at present is not acceptable as would lead to significant erosion, and hence that the situation must be remedied in a timely manner.

Please do not hesitate to contact me to discuss these issues further.

Hebe Carus  
Access & Conservation Officer